MONTANA ADMINISTRATIVE REGISTER

2023 ISSUE NO. 21
NOVEMBER 3, 2023
PAGES 1428-1575

ISSUE NO. 21

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-43-641 (Public Employees' Retirement Board) Amended Notice of Proposed Amendment - Application Process for Disability Benefits. No Public Hearing Contemplated. 1428-1430

EDUCATION, Title 10

10-102-2301 (Montana State Library) Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Updating Rules to Comply With Recent Legislation. 1431-1439

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-617 (Fish and Wildlife Commission and the Department) Notice of Public Hearing on Proposed Amendment and Repeal - Block Management Program. 1440-1448

12-618 (Fish and Wildlife Commission and the Department) Notice of Public Hearing on Proposed Amendment and Repeal - Contractual Elk Hunting Access Agreements. 1449-1452

Page Number

ENVIRONMENTAL QUALITY, Department of, Title 17

17-432E Notice of Proposed Amendment - Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality. No Public Hearing Contemplated. 1453-1468

17-435 Notice of Proposed Repeal - Third-Party Remedial Actions at Order Sites. No Public Hearing Contemplated. 1469-1470

LABOR AND INDUSTRY, Department of, Title 24

24-174-80 (Board of Pharmacy) Notice of Public Hearing on Proposed Adoption - Pharmacist Prescribing. 1471-1472

24-209-1 Notice of Public Hearing on Proposed Adoption - Property Management Licensure. 1473-1479

24-219-37 (Board of Behavioral Health) Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Board of Behavioral Health. 1480-1508

24-225-43 (Board of Pharmacy and Board of Veterinary Medicine) Notice of Public Hearing on Proposed Amendment and Adoption - Veterinary Retail Dispensing. 1509-1514

24-351-357 Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Building and Commercial Measurements Bureau. 1515-1522

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-221 Notice of Public Hearing on Proposed Amendment - State Land Leasing. 1523-1527

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-1031 Notice of Public Hearing on Proposed Amendment - Children's Mental Health Services. 1528-1534

REVENUE, Department of, Title 42

42-1068 Notice of Public Hearing on Proposed Amendment - Residential Property Tax Assistance Program Improvements. 1535-1545

42-1069 Notice of Public Hearing on Proposed Amendment - Personal Property Depreciation Schedules and Trend Tables. 1546-1549

Page Number

SECRETARY OF STATE, Office of, Title 44

44-2-267 Notice of Public Hearing on Proposed Amendment - Determining a Valid Write-In Vote in Manually Counting and Recounting Paper Ballots. 1550-1552

44-2-268 Notice of Public Hearing on Proposed Amendment - Ballot Form and Uniformity. 1553-1554

RULE ADOPTION SECTION

COMMERCE, Department of, Title 8

8-111-203 Notice of Adoption - Administration of the Emergency Shelter Facility Grant (ESFG) Program. 1555-1557

LABOR AND INDUSTRY, Department of, Title 24

24-150-42 Notice of Adoption and Repeal - Licensed Hearing Aid Dispenser Program. 1558-1560

24-159-95 (Board of Nursing) Notice of Amendment, Adoption, and Repeal - Board of Nursing. 1561

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-218 Notice of Amendment - Navigable Waterways. 1562

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-1037 Corrected Notice of Amendment - Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates. 1563-1564

REVENUE, Department of, Title 42

42-1067 Notice of Repeal - Property Tax Abatements for Gray Water Systems. 1565

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1566-1567

How to Use ARM and MAR. 1568

Recent Rulemaking. 1569-1575

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.2602 pertaining to the application process for disability benefits	)))))	AMENDED NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 20, 2023, the Public Employees' Retirement Board published MAR Notice No. 2-43-641 pertaining to the proposed amendment of the above-stated rule at page 1201 of the 2023 Montana Administrative Register, Issue Number 20. The board is amending the rule notice due to the inadvertent omission of sending the notice to the staff of the State Administration and Veterans' Affairs Committee staff for review consistent with 2-4-302(2)(a), MCA.

2. On January 2, 2024, the board proposes to amend the above-stated rule.

3. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on November 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.2602 APPLICATION PROCESS FOR DISABILITY BENEFITS (1) All forms necessary to apply for disability benefits may be obtained ~~from~~ by contacting MPERA.

(2) through (2)(b) remain the same.

(c) attending physician's statements~~, including~~ and all medical records specific to the claimed disabling conditions ~~required to substantiate a disability claim~~;

(d) and (e) remain the same.

(3) If MPERA or the board's medical consultant requests that an applicant complete an application package or requests additional medical documentation, all requested information must be received within 90 days or the application may be administratively closed unless the applicant is unable to provide the requested information due to a disabling condition.

(4) MPERA requires documentation from specialists when an applicant alleges certain disabling conditions:

(a) mental or emotional disorders require a report from a psychiatrist or a

minimum of one report each from a psychologist and a medical physician;

(b) orthopedic conditions require a report from a treating or consulting orthopedic specialist or orthopedic surgeon; and

(c) neurological conditions require a report from a treating or consulting neurologist or neurosurgeon.

(3) through (5) remain the same but are renumbered (5) through (7).

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-2-406, 19-3-1002, 19-3-2141, 19-5-601, 19-6-601, 19-7-601, 19-8-701, 19-9-902, 19-13-802, MCA

REASON: The proposed amendments are intended to address two ongoing issues with the disability retirement application process: 1) incomplete or partial applications where the applicant does not respond to requests for information for long periods of time; and 2) the submission of applications that do not include medical documentation from specialists in the area of the applicant's claimed disabling condition. The proposed amendments seek to make the disability retirement application process more predictable for the applying retirement system member, reduce the overall application processing time, and reduce the number of applications that are initially denied by the board due to insufficient medical evidence.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., December 1, 2023.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., December 1, 2023.

7. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 7,817 persons based on approximately 78,167 defined benefit retirement plan members as of June 30, 2023.

8. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request

that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State October 24, 2023.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV, the amendment of ARM 10.102.1158, 10.102.1160, 10.102.4003, 10.102.9101, 10.102.9102, 10.102.9104, 10.102.9105, and the repeal of ARM 10.102.9103 and 10.102.9106 pertaining to updating rules to comply with recent legislation	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 1, 2023, at 1:00 p.m., the Montana State Library Commission will hold a public hearing on Zoom to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may access the Zoom meeting in the following way: https://mt-gov.zoom.us/j/83743258712?pwd=a25zQmtQdm85NU9CSk5JUjFIRTBNZz09

Meeting ID: 837 4325 8712
Password: 033539

Dial by Telephone
+1 646 558 8656
Meeting ID: 837 4325 8712
Password: 033539
Find your local number: https://mt-gov.zoom.us/u/kc5Bg8R53I

2. The Montana State Library will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Library no later than 5:00 p.m. on November 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Genevieve Lighthiser, Montana State Library, 1201 11th Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email glighthiser@mt.gov

3. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Additional population" means the population count that is to be credited to each public library based on the proportion of that municipality's population to the total population of the county.

(2) "Additional square miles" means the number of square miles credited to each public library based on the proportion of that municipality's population to the total population of the county.

(3) "Leftover population" means the population count remaining in each county after the population counts of each municipality with library service are subtracted.

(4) "Leftover square miles" means the number of square miles left in each county after the square miles of each municipality with public library service are subtracted from the total number of square miles in the county.

(5) "Population" means those official, final figures from the most recent decennial census of population produced by the U.S. Census Bureau.

(6) "Public library" means those libraries as defined in 22-1-303 through 22-1-317, MCA, 22-1-701 through 22-1-716, MCA, or an accredited tribal college library that provides services to the public. All libraries must comply with the standards set forth in ARM 10.102.1158 through 10.102.1162.

(7) "State funding" means state aid per capita funding and funding received through a library federation. To receive state funding, libraries must meet the public library standards set forth in ARM 10.102.1158 through 10.102.1161 or be granted a deferral as set forth in ARM 10.102.1162.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The definitions are proposed as a new rule as they apply to the chapter rather than the specific rule.

NEW RULE II INTRODUCTION (1) The following rules apply to the administration of a state reference network to provide real-time geospatial location data from any location within the network.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: These rules are required by statute and necessary to implement a subscription rate to fund the Montana Real Time Network.

NEW RULE III DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Contributing organization" means an individual or organization that contributes equipment, equipment maintenance, network connectivity, or other comparable service to the state reference network of value equal to or greater than cost of an individual subscription rate. Contributing organizations may receive credit for multiple logins based on the value of the contributions to the state reference network as established in a contributing organization agreement.

(2) "Contributing organization agreement" is an agreement between the Montana State Library and a contributing organization that depicts the value of the contribution and any credit the contributing organization will receive.

(3) "Educational use" means any use directly related to learning, teaching, training, research, and development that is part of the instructional functions performed by a qualified educational institution and, in the case of students, uses related to learning, training, research or development. "Educational use" does not include commercial, professional, or any other for-profit purposes.

(4) "Educational use agreement" is a document between the Montana State Library and a faculty member of a Montana K-12 school, college, or university that documents the project, number of logins required, and period required to complete the project.

(5) "Login" is a username and password that is licensed to access the state reference network. A login is associated with an individual or an organization.

(6) "Operating funds" means the amount of revenue necessary to operate the state reference network for the upcoming biennium.

(7) "State reference network" means a real time positioning network operated by the Montana State Library.

(8) "Subscription rate" means the annual cost per login.

(9) "Total logins" means the count of current logins as of December 1 of each even-numbered year plus an estimate of new logins in the coming biennium, minus the number of logins for contributing organizations.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: These rules are required by statute and necessary to implement a subscription rate to fund the Montana Real Time Network.

NEW RULE IV DETERMINATION OF OPERATING FUNDS AND RATE SETTING PROCESS (1) Each even-numbered year the State Library, in consultation with the Governor's Office of Budget and Program Planning, will determine the amount of operating funds necessary to operate the state reference network in the forthcoming biennium.

(2) The subscription rate will be set in accordance with procedures set forth by the Office of Budget and Program Planning.

(3) By January 1 of each odd-numbered year, the State Library will publicize the new rate.

(4) New subscription rates take effect July 1 of each odd-numbered year.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: These rules are required by statute and necessary to implement a subscription rate to fund the Montana Real Time Network.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

10.102.1158 LIBRARY BOARD, GOVERNANCE, AND WORKING WITH THE DIRECTOR (1) The library is established per Title 7, MCA, Title 22, MCA, or through the legal process practiced by ~~a tribal council~~ an accredited tribal college library that provides services to the public.

(2) through (6) remain the same.

(7) ~~The library budget shows year-to-year growth reflecting community needs. The director and library board routinely present the library to the community and local government in a manner to maintain and increase the library's ability to meet their community's needs.~~ Public library boards and directors will identify the requisite financial resources necessary to provide adequate library services pursuant to the library's mission and will regularly communicate with community and local government leaders about financial needs and ability to meet community needs.

(8) through (12) remain the same.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: These amendments are proposed to update the language of the rule to reflect changes to 22-1-327, MCA, in the 2023 Legislative Session and to clarify public library standards for securing financial resources for the operation of public libraries.

10.102.1160 PERSONNEL (1) through (6) remain the same.

~~(7) Directors of libraries that serve over 25,000 people have a Master of Library Science or equivalent degree.~~

REASON: This amendment is proposed to reflect the commission's opinion that local boards should be given responsibility to set library director qualifications as the size of the community may require a different skillset or knowledge base for the library director.

10.102.4003 DIRECT STATE AID TO PUBLIC LIBRARIES FOR PER CAPITA AND FOR PER SQUARE MILE SERVED ~~(1) Definitions used in this section include:~~

~~(a) "Public library" means those libraries as defined in 22-1-303 through 22-1-317 , MCA, and in Title 7, MCA.~~

~~(b) "Population" means those official, final figures from the most recent decennial census of population produced by the U.S. Bureau of the Census.~~

~~(c) "Leftover population" means the population count remaining in each county after the population counts of each municipality with library service are subtracted.~~

~~(d) "Additional population" means the population count which is to be credited to each public library based on the proportion of that municipality's population to the total population of the county.~~

~~(e) "Leftover square miles" means the number of square miles left in each county after the square miles of each municipality with public library service are subtracted from the total number of square miles in the county.~~

~~(f) "Additional square miles" means the number of square miles credited to each public library, based on the proportion of that municipality's population to the total population of the county.~~

(2) through (6) remain the same but are renumbered (1) through (5).

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: These amendments are proposed to update the language of the rule to reflect changes to 22-1-327, MCA, in the 2023 Legislative Session.

10.102.9101 INTRODUCTION (1) The following rules define the development of ~~an annual land~~ a geospatial information plan, the application and granting processes, the grant monitoring process, and the process for coordination of technological standards for creating ~~land~~ geospatial information as provided in 90-1-404, MCA.

AUTH: 90-1-413, MCA
IMP: 90-1-404, MCA

REASON: These changes are required by statute and mirror the revised language and terms as used in the statute.

10.102.9102 DEFINITIONS In addition to the definitions found in 90-1-403, MCA, the following definitions apply:

(1) ~~"Available grant funds" means the balance of the Montana land information account on March 31 of each fiscal year, plus an estimate of not-yet-deposited state funds held by counties as of that date, less the state library's budget associated with duties and responsibilities defined in 90-1-404, MCA, for the fiscal year and any funds committed to grants.~~ "Council" means the Montana Geospatial Information Advisory Council as defined in 90-1-405, MCA.

(2) "Grant criteria" mean any specific grant conditions set forth by the state library, with the advice of the council, pertaining to subject matter of grant applications, applicable standards, submittal of applications, or other conditions that define the nature of applications that will be accepted.

~~(3) "Grant review subcommittee" means a subcommittee established by the council that, together with the state library, will formulate grant criteria consistent with the purpose of the Montana Land Information Act, and review grant applications.~~

~~(4) "Land information plan subcommittee" means a subcommittee established by the council that, together with the state library, will formulate land information plans.~~

~~(5)~~ (3) "Montana spatial data infrastructure" or "MSDI" means digitally formatted ~~land~~ geospatial information, policies, best practices, and data products that ~~is~~ are identified by the council as necessary to meet the ~~land~~ geospatial information needs of the state of Montana and its citizens. The MSDI can and does include data themes identified in the National Spatial Data Infrastructure and where

collaborative opportunities exist, presents an opportunity to support framework data for the nation.

~~(6)~~ (4) "State agency" means any entity of the executive branch, legislative branch, or judicial branch, including the university system as defined in 2-15-102, MCA.

(7) remains the same but is renumbered (5).

~~(8)~~(6) "Theme stewards" means those agencies or organizations recognized by the council as having responsibility for leading and promoting ~~land~~ geospatial information, geospatial technology, and/or geographic information systems (GIS) that ~~is~~ are considered part of the Montana spatial data infrastructure.

AUTH: 90-1-413, MCA
IMP: 90-1-404, MCA

REASON: These changes are required by statute and mirror the revised language and terms as used in the statute.

10.102.9104 ~~ANNUAL LAND~~ GEOSPATIAL INFORMATION PLAN

(1) ~~Annual land~~ A geospatial information plan~~s~~ will be developed to meet the purpose of the Montana ~~Land~~ Geospatial Information Act, including the coordination, creation, collection, maintenance, integration, or dissemination of MSDI themes, geospatial standards, or other associated work.

(2) Theme stewards may provide to the ~~land information plan subcommittee~~ council suggested specific goals and objectives relating to the theme they represent ~~for the next fiscal year~~.

~~(3)~~ (4) If a rewrite or updates are necessary, the state library will ~~shall~~ prepare ~~its suggested goals and objectives for the same time period, and shall provide~~ the ~~land~~ geospatial information plan ~~subcommittee~~ and the budget necessary to carry out these duties and responsibilities. ~~During the same period the state library will ask seek for public comment on changes to the plan. goals and objectives for the next fiscal year's land plan. By November 1 of each fiscal year, the state library with advice from the land information plan subcommittee, shall develop a draft land information plan for the next fiscal year.~~ The plan will ~~shall~~ include specific goals and objectives based upon input from theme stewards, the state library and comments received during the public comment period along with a budget for the state library's duties and responsibilities as defined in 90-1-404, MCA. ~~The state library shall submit the draft plan to the council and the council shall advise the state library on recommended changes to the draft plan and the library's budget.~~

~~(4)~~ (3) By ~~December 15~~ September 1 of each fiscal year, the state library will ~~shall~~ complete a review of the ~~land~~ geospatial information plan. ~~and submit the plan to the state library commission for approval. Upon approval by the library commission the state library shall publish the final plan on the library's web site.~~

(5) The state library will seek public comment on the plan.

(6) The state library will submit the draft plan to the council and the council will advise the state library on recommended changes to the draft plan and the library's budget.

AUTH: 90-1-413, MCA
IMP: 90-1-404, MCA

REASON: Revised legislation no longer requires the State Library to draft an annual land plan. The proposed rules allow more flexibility.

10.102.9105 ESTABLISHING THE GRANT APPLICATION AND GRANTING PROCESS (1) ~~By January 15 of each fiscal year,~~ T~~t~~he state library~~, with advice from the grant review subcommittee, shall~~ will develop the grant criteria ~~for the fiscal year beginning on the following July 1,~~ based upon the goals and objectives from the ~~land~~ geospatial information plan, and ~~shall~~ will publish the grant criteria, grant application forms, and instructions for submitting grant applications to the library's web site. Grant criteria ~~may~~ will allow for two-year funding and may allow for multiyear projects.

(2) Grant applications received by the state library ~~before 5:00 p.m. on February 15~~ will be considered for funding.

~~(3) Upon receipt, the state library will advise applicants of incomplete grant applications. Applications initially incomplete, but completed and received by March 1, will be evaluated for possible funding.~~

~~(4)~~ (3) By May 1 of each ~~fiscal~~ even-numbered year, the state library, based on grant criteria and with advice of the ~~grant review subcommittee~~ council, will ~~shall~~ identify and prioritize grant applications that meet the grant criteria and warrant approval ~~and shall rank them in priority order~~. Previously approved multiyear projects ~~may~~ must be placed at the top of the priority list. The ~~grant review subcommittee chair~~ state library ~~shall~~ will distribute the results to the council.~~,~~ ~~consider additional comments, and report those comments to the state library if necessary.~~

~~(5)~~ (4) By May 15 of each ~~fiscal~~ even-numbered year, the state library commission, with advice of the council ~~grant review subcommittee~~, will ~~shall finalize the priority order of the~~ award grants.

~~(6) The state library shall disburse available grant funds to grant applicants in the order of priority set forth under (5). Available grant funds in excess of the funding necessary for the applications that meet the grant criteria shall be added to the available grant funds for the subsequent grant period.~~

AUTH: 90-1-413, MCA
IMP: 90-1-404, MCA

REASON: Revised rules will allow for a biennial grant application period rather than requiring grants to be awarded annually. This change is more efficient of staff and applicants and by reducing the work required to administer a grant application process and eliminates the work required to grant extensions to grantees who typically require two years to complete grants.

5. The State Library proposes to repeal the following rules:

10.102.9103 APPOINTMENT OF LAND INFORMATION PLAN AND GRANT REVIEW SUBCOMMITTEES

AUTH: 90-1-413, MCA
IMP: 90-1-404, MCA

REASON: A subcommittee is no longer necessary given the new make-up of the committee.

10.102.9106 MONITORING THE MONTANA LAND INFORMATION ACCOUNT FUNDS

AUTH: 90-1-413, MCA
IMP: 90-1-404, MCA

REASON: This rule serves no practical purpose.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Genevieve Lighthiser, Montana State Library, 1201 11th Avenue, Helena, Montana, 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email glighthiser@mt.gov, and must be received no later than 5:00 p.m., December 1, 2023.

7. Robyn Scribner, Montana State Library Commission Chair, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by Jennie Stapp, State Librarian on October 4, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Robyn Scribner
Robyn Scribner
Commission Chair
Montana State Library

Certified to the Secretary of State October 24, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of ARM 12.4.203, 12.4.205, 12.4.206, 12.4.207, and 12.4.210 and the repeal of ARM 12.4.204 and 12.4.208 pertaining to the block management program	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 1, 2023, at 1:00 p.m., the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) will hold a public hearing via the ZOOM meeting platform to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: + 1 206 337 9723
Meeting ID: 889 6774 5276
Passcode: 562637

2. FWP and the commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact FWP, no later than 5:00 p.m., on November 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. General Statement of Reasonable Necessity. FWP and the commission are proposing to initiate a comprehensive update to the block management program's administrative rules. Particularly, FWP and the commission intend on removing outdated and repetitive language, further clarifying outstanding language, and ensuring compliance with statutory requirements. The purpose of the proposed block management rules is to update them for the first time in more than 25 years.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.4.203 DEFINITIONS ~~Wherever used in ARM 12.4.201 through 12.4.210, unless a different meaning clearly appears from the context~~ The following definitions apply to this subchapter:

(1) "Accessible state lands" means ~~those~~ state lands under the jurisdiction of the Montana ~~d~~Department of ~~n~~Natural ~~r~~Resources and ~~c~~Conservation ~~which are accessible as described in ARM 36.25.165~~.

(2) "BMA" means a block management area. A BMA is a specified area on which, by cooperative agreement between the landowner, other resource management agencies, and the department, public hunting is permitted with certain restrictions or use rules.

~~(3) "Block management tabloid" means the document printed annually which provides statewide information on the block management program and describes means through which hunters may get specific information on block management opportunities.~~

(3) "Commercial filming of hunting activity" means the film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a commercial purpose.

(4) "Commercial hunting activity" means any activities in which money, goods, or services ~~a consideration is~~ are required as a condition for hunting.

(5) "Cooperator" means a private or public landowner or land management agency with which the department enters into an agreement for the purposes of ~~the~~ allowing hunting access on a BMA.

(6) "Department" means the Montana Department of Fish, Wildlife~~,~~ and Parks.

(7) "Director" means the director of the Montana Department of Fish, Wildlife~~,~~ and Parks.

(8) "DNRC" means the Montana Department of Natural Resources and Conservation.

(9) "Hunter day" means one hunter who hunts on a cooperator's property during a calendar day.

(10) "Hunting season" means the time during which game birds and game animals may be legally taken in accordance with ~~as defined by~~ the Fish and Wildlife ~~c~~Commission regulations ~~under 87-1-304, MCA~~.

(11) "Livestock loss insurance" means a program which provides reimbursement to livestock owners whose animals are injured or killed as the direct result of allowing public hunting on their property.

(12) "Outfitting" means the act of providing hunting-related services in exchange for money, goods, or services ~~a consideration as defined in 37-47-101(5), MCA~~.

~~(13) "Regional office" means the headquarters of a department administrative region.~~

~~(14)~~(13) "Regional supervisor" means the supervisor of a regional office.

~~(15) "Use season" means the period of time during which a BMA is open and functioning, allowing public hunting.~~

AUTH: 87-1-301, 87-1-303 MCA
IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to reflect deleted language and grammatical changes, as well as to provide the public with understandable language.

12.4.205 USE OF BLOCK MANAGEMENT AREAS (1) ~~The following governs use of BMAs:~~

~~(a) Use restrictions for each BMA shall be established by negotiation between department personnel and the cooperator. Restrictions may include but may not be limited to:~~

~~(i) restrictions on vehicle use or off-road travel for access or downed game retrieval;~~

~~(ii) number of hunters or hunting parties utilizing a BMA per day;~~

~~(iii) times and places at which permission slips or other instructions are provided on-site to the public; and~~

~~(iv) duration of the use season.~~

~~(b) When lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion.~~

~~(c)~~ If a hunter reserves permission on a BMA that restricts hunter numbers or requires reservations, that hunter cannot reserve permission on another BMA, for that same day, unless the hunter receives permission from the cooperator. The cooperator maintains ~~On BMAs which restrict hunter numbers, a cooperator may allow additional hunters at his or her~~ discretion to allow additional hunters on the BMA.

~~(d)~~(2) The cooperator and the department reserve the right to deny access to a BMA for cause.~~,~~ Reasons for denying access may include ~~including but not limited to:~~ intoxication, violation of BMA rules, or previous misconduct on a BMA. A ~~W~~willful violation of BMA rules ~~regulations on private property which set the terms for entrance on a cooperator's property can be grounds for terminating privileges on a BMA and~~ may result in a misdemeanor citation under 87-6-415 ~~87-3-304~~, MCA~~, hunting without landowner permission~~. BMAs may also be temporarily closed by the cooperator, in conjunction with the department, due to weather, livestock operations, fire danger, or other conditions or circumstances which would place public safety or resources in jeopardy.

~~(e) Priority consideration for block management enrollment will be given for lands that are open to all species and gender of game birds and animals available in huntable numbers, with access provided by the cooperator concurrent with applicable fall hunting season dates. Any restrictions on the gender or species available for hunting on a BMA, other than those established by the commission, must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions before implementation of the BMA. Species and gender restrictions, other than those established by the commission, may not be imposed on state or federal land.~~

~~(f)~~(3) BMAs which impose daily hunter number limits will allow free~~, equitable~~ and equal opportunities for access to all hunters requesting use of the BMA. ~~based on a daily hunter number capacity agreed upon by the cooperator and the department. The allocation of this hunter capacity will be on a first come, first served basis. In the event that hunting demand for a certain BMA is greater than supply, similar hunting opportunities may be offered on other days on the BMA or on other BMAs. On BMAs where hunter demand regularly exceeds available opportunity, the department, where practical, or the cooperator, with department approval, will develop equitable methods of allocation such as telephone reservations or drawings.~~

~~(g) During periods when a BMA is not in operation and commission-established hunting seasons are in effect, access to private land is at the discretion of the landowner. These periods will be duly noted on enrollment forms as well as in information distributed to the public. During such non-block management periods, accessible federal and state lands will remain open to the public for recreation under rules and regulations adopted by the appropriate land management agency. Hunter days that occur when a BMA is not in operation and does not provide access to the general public will not be counted towards any compensation given the landowner to offset potential impacts of public hunting on the property.~~

~~(h) Enrollment in the block management program may be terminated by the department or the cooperator if the terms of the contract or enrollment form are violated; or, by the department or the cooperator within 30 days following the end of the hunting season. DNRC may withdraw state lands from inclusion in a BMA under ARM 26.3.199C. Any such notice must be in writing. A contract or enrollment may be canceled and a cooperator's property withdrawn from the program at any time due to circumstances beyond the control of the cooperator or the department, such as death, illness, natural disaster, or acts of nature.~~

~~(i) Cooperators may enroll in or contract to participate in the block management program for up to 5 years at a time. However, this will be contingent on the annual availability of funds to operate the BMA.~~

~~(j) Reservations for hunting opportunities on BMAs which restrict hunter numbers may not be accepted by cooperators or department personnel operating a BMA on behalf of a cooperator before September 1 preceding the opening of a use season.~~

~~(k) On BMAs which restrict hunter numbers or require reservations, a hunter cannot reserve permission on more than one BMA per day.~~

(4) With department approval, a cooperator may impose reasonable limitations through temporary closure of a BMA to address concerns related to high fire danger, rest-days, weather-related impacts to a travel route, safety, or agricultural production activities, such as livestock handling or harvest and planting of crops, so long as:

(a) the cooperator notifies the department regional headquarters at least 24 hours prior to the closure;

(b) the cooperator or department personnel post signage indicating the closure; and

(c) the closure is removed within 24 hours after the conditions causing the closure no longer exist.

AUTH:87-1-301, 87-1-303, MCA
IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to reflect and provide clearer guidelines concerning the use of block management areas, as well as to advance the Governor's Office Red Tape Relief Initiative.

12.4.206 COMPENSATION TO COOPERATORS (1) ~~Cooperators in the program may receive various forms of compensation for their participation including, but not limited to, the following:~~

~~(a) department oversight and supervision of hunting on a BMA including the development and implementation of a hunter reservation system administered by the department when practical. For cooperators who elect to have the department provide personnel whose primary duty it is to manage hunting on their property, a compensation value will be assigned to those services by the department, with that amount deducted from the total of any monetary compensation for which the cooperator is otherwise eligible under (1)(c) and (2) of this rule;~~

~~(b) supplying of permission books or other materials which document hunter use, signs or hunting season related supplies; and~~

~~(c) monetary compensation to offset potential impacts associated with allowing public hunting access. These impacts include, but are not limited to, those identified in 87-1-267(5), MCA, and time spent dealing with hunters. Payments to cooperators will be made following the close of the use season and the submission of hunter use documents (permission slips, etc.) to the department.~~

~~(2) Payments to cooperators will be set by the department, figured in the following manner and dependant on available funding~~ Cooperators enrolled in the BMA program may receive the following types of payments:

(a) a basic enrollment payment ~~which will be provided to anyone enrolled in the program~~;

(b) a basic hunter day impact payment ~~which will be provided to all cooperators and~~ computed at an amount per hunter day;

(c) a length of season impact payment ~~which will be available in addition to other impact payments to~~ for cooperators who place no restrictions on commission-established fall hunting seasons ~~for any species legally available in huntable numbers on their property. This rate will be set at one-third of the base impact payment~~;

(d) a species/~~gender~~ sex impact payment ~~which will be available in addition to other impact payments, to~~ for cooperators who place no restrictions on the species and ~~gender~~ sex of elk, deer, antelope, upland game birds, and waterfowl, ~~available in huntable numbers~~ as they exist on their property~~. This rate will be set at one-third of the base impact payment~~;

~~(e) cooperators who provide access corridors to isolated state or federal lands, with no enrollment of deeded land permitting public hunting access, will be eligible for compensation at 50% of the base impact payment and if no restrictions are placed on the length of season, 50% of the length of season impact payment, based on the number of hunters for which access is provided;~~

~~(f) in situations involving unique hunting opportunities or special management circumstances, compensation may be negotiated on a case-by-case basis at a rate not to exceed limits set in 87-1-267(7), MCA. Compensation amounts in these situations will require written approval of the regional supervisor; and~~

~~(g) for those cooperators who elect to receive monetary compensation under this rule, a method of measuring hunter use on the property must be used to document hunter days. This may include, but is not limited to permission slips, daily use rosters or other methods which will accurately reflect the hunter use of a~~

~~cooperator's property. For those areas with unrestricted access where rosters or permission slips may not be practical, standard department hunter use accounting methods will be used to calculate hunter days.~~

~~(3)~~(2) ~~Additional forms of compensation may also include~~ Cooperators may also receive compensation for:

(a) livestock loss insurance payable at full market value of any loss up to $5,000;

(b) ~~the~~ supplying ~~of~~ wildlife damage materials ~~and supplies~~; ~~and~~

(c) permitting wildlife game damage hunts;

(d) participating in a unified aggregate cooperative;

(e) every five years of participation in the BMA program; and

(f) participation in other department cooperative programs.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to clarify the types of payments cooperators may receive, as well as to advance the Governor's Office Red Tape Relief Initiative.

12.4.207 OUTFITTING AND COMMERCIAL HUNTING ACTIVITY

(1) Outfitting and commercial hunting activities on BMAs are not consistent with the intent of providing free public access to recreational opportunities on private lands. Outfitting may not take place on a BMA unless public recreation and hunting opportunities are not unreasonably restricted and the cooperator and regional supervisor approve the activity.

(2) This rule does not regulate licensed outfitters legally operating on federal or state lands under license or permit obtained from the U.S. Department of Interior ~~b~~Bureau of ~~l~~Land ~~m~~Management, U.S. Department of Agriculture ~~f~~Forest ~~s~~Service, DNRC, or other resource management agency.

(3) A report documenting outfitting activities on the BMA must be supplied by the cooperator, to the department, within thirty days of the contract ending date. At a minimum, the outfitting activities report must explain:

(a) total number of days outfitted hunting occurred;

(b) total number of outfitted hunters who hunted;

(c) total number of outfitted hunter days that occurred; and

(d) total number of game animals, by species and sex harvested by outfitted hunters.

(4) A cooperator, who is also a licensed outfitter, is not eligible to receive block management compensation for any activities conducted by their own hunting clients.

(5) If a cooperator receives compensation from an outfitter or clients, the cooperator is not entitled to a basic hunter day impact payment for the days associated with that use.

(6) Commercial filming of hunting activity is not consistent with the intent of free public hunting access on private lands and is not allowed without express consent from the cooperator.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendment to this rule to better reflect the requirements of cooperators who allow outfitting or commercial hunting activities on their property, to prohibit cooperators from double-dipping or receiving payments in two programs, and to ensure statutory compliance.

12.4.210 COMPLAINT RESOLUTION SYSTEM (1) If a cooperator or a public hunter has an issue and the issue has not been resolved by regional department staff, the cooperator or hunter may submit a formal complaint to the regional supervisor. Formal complaints ~~BMA cooperators or hunters may make complaints to the department of problems they have encountered on a BMA. The department shall use the following procedure to investigate and resolve complaints.~~

~~(a) Block management personnel are encouraged to work on-site to address problems before they reach the complaint stage.~~

~~(b) Formal complaints~~ must be in writing, signed by the complainant, and should describe ~~and may be presented to any department employee. Complaints need to include information describing~~ the events that transpired, the BMA involved, the name(s) and contact information of those involved, and, if relevant, any vehicle description ~~and the names, addresses and, if possible, phone numbers of all individuals involved~~.

~~(c) Complaints will be turned in immediately to the regional supervisor of the region in which the problem occurred and documented for tracking purposes.~~

~~(d)~~ (2) The regional supervisor will review the complaint and ~~is responsible for assessing complaints and~~ initiate ~~initiating~~ the appropriate level of investigation. ~~If the complaint involves state lands or federal lands, the supervisor will involve the appropriate management agency in resolving the complaint.~~

~~(e)~~ At the conclusion of the investigation, the regional supervisor will provide written notification to the complainant and the director. ~~department field services administrator of~~ The notice will include the results of the investigation ~~as well as~~ and any action(s) taken as a result of the investigation. ~~Other parties directly involved with the complaint (cooperator, land management agencies, etc.) will also be notified.~~

~~(f)~~ (3) A complainant may appeal the action taken by a regional supervisor to the director. The director will review the complaint and investigation and issue a written decision.

~~(g) Following the close of the hunting season, the field services division of the department will review and summarize all complaints lodged during the preceding hunting season. Each regional office will get a copy of this summary as well as identification of problem areas and suggested solutions.~~

~~(h) For BMAs with any complaints which remain unresolved on March 1 annually after having been investigated through this process, the complaints will be reviewed as set forth in ARM 36.25.167 to determine if a public review is necessary to assess if continued enrollment in the program is appropriate.~~

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to better reflect existing practices, as well as to advance the Governor's Office Red Tape Relief Initiative.

5. The department proposes to repeal the following rules:

12.4.204 CRITERIA FOR PARTICIPATION

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-301, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule to provide flexibility in determining the appropriate criteria for participating in the block management program, while also advancing the Governor's Office Red Tape Relief Initiative.

12.4.208 INFORMATION DISSEMINATION

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-301, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule to advance the Governor's Office Red Tape Relief Initiative.

6. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Charlie Sperry, Department of Fish, Wildlife and Parks, P.O Box 200701, Helena, Montana, 59620-0701; or email fwpprk@mt.gov, with "BLOCK MANAGEMENT ARM" in the subject line and must be received no later than 5:00 p.m., December 4, 2023.

7. Christina Bell or another hearing officer appointed by FWP has been designated to preside over and conduct the hearing.

8. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by FWP or the commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply. However, Senate Bill 58 raised the block management payment cap to $50,000.00. In that regard, FWP notified the bill sponsor of its intent to initiate rulemaking for the block management program on June 19, 2023, by email.

10. With regard to the requirements of 2-4-111, MCA, FWP has determined that there are 1,400 landowners participating in the block management program. The new raise in cap, as it relates to block management payments, from $25,000 to $50,000, will result in a net gain to participating landowners. As a result of the increased payment landowners will receive, outfitters may be impacted and may be required to pay additional funds to lease the landowner's property. FWP cannot quantify the fiscal impact to outfitters. Accordingly, there is a potential to impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State October 24, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of ARM 12.9.901 and 12.9.908 and the repeal of ARM 12.9.902, 12.9.905, and 12.9.911 pertaining to contractual elk hunting access agreements	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 1, 2023, at 10:00 a.m., the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) will hold a public hearing via the ZOOM meeting platform to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: + 1 206 337 9723
Meeting ID: 826 2139 9536
Passcode: 530224

2. FWP and the commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact FWP, no later than 5:00 p.m., on November 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. General Statement of Reasonable Necessity. FWP and the commission are proposing to initiate a comprehensive update to the contractual elk hunting access agreement's administrative rules. Particularly, FWP and the commission intend on removing outdated and repetitive language, clarifying outstanding language, and ensuring compliance with statutory requirements.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.9.901 DEFINITIONS The following definition~~s~~ applies ~~apply~~ to this subchapter:

(1) "Contractual public elk hunting access agreement" or "EHA agreement" means a negotiated agreement between the department and a landowner which defines how free public elk hunting may occur on land enrolled under the agreement.

~~(2) "Regular hunting season" means the general season established by the commission for hunting elk with firearms in a hunting district which contains land enrolled in a contractual public elk hunting access contractual agreement.~~

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA
IMP: 87-2-513, MCA

REASON: FWP is proposing amendments to this rule to remove unnecessary language.

12.9.908 PROCESS FOR COMMISSION CONSIDERATION OF PERMITS

(1) Elk hunting access applications must be submitted on a form prescribed by the department, and only complete applications will be accepted ~~In order for the commission to determine the number of hunting permits to issue under 87-2-513, MCA, the department shall complete negotiations for contractual public elk hunting access agreements prior to the commission meeting at which the commission makes final permit quota decisions~~.

(2) Elk hunting access applications must be received on or before May 1. Any elk hunting access application received after May 1 is ineligible for commission consideration ~~The department shall place proposals to grant permits under 87-2-513, MCA, on the commission agenda as part of the commission meeting when final permit quota decisions are made~~.

(3) All complete elk hunting access applications, draft EHA agreements, and hunter/landowner satisfaction data from the prior year will be presented to the commission for consideration in their decision. Specific landowner, landowner designee, and public hunter contact information, such as their email address, phone number, and ALS number, will be redacted.

(4) The commission reserves the right to reject elk hunting access applications or deny the issuance of permits and or licenses, or both, under this program.

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA
IMP: 87-2-513, MCA

REASON: FWP is proposing amendments to this rule to better reflect existing practices, streamline administration of the program, and to advance the Governor's Office Red Tape Relief Initiative.

5. The department proposes to repeal the following rules:

12.9.902 ELIGIBILITY

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA
IMP: 87-2-513, MCA

REASON: FWP is proposing repeal of this rule because it duplicates language in the statute.

12.9.905 CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENTS

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA
IMP: 87-2-513, MCA

REASON: FWP is proposing repeal of this rule because part of the language is duplicative, as it currently resides in statute, and the remainder would be better suited in a policy document by the division. Moreover, repeal of the rule would advance the Governor's Office Red Tape Relief Initiative.

12.9.911 PROCESS FOR SELECTING PERMIT HOLDERS

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA
IMP: 87-2-513, MCA

REASON: FWP is proposing repeal of this rule to advance the Governor's Office Red Tape Relief Initiative and because the language for selecting a permit holder would better reside in a policy document by the division.

6. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Charlie Sperry, Department of Fish, Wildlife and Parks, P.O Box 200701, Helena, Montana, 59620-0701; or email fwpprk@mt.gov, with "EHA ARM" in the subject line and must be received no later than 5:00 p.m., December 4, 2023.

7. Christina Bell or another hearing officer appointed by FWP has been designated to preside over and conduct the hearing.

8. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by FWP or the commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 19, 2023.

10. With regard to the requirements of 2-4-111, MCA, FWP has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Montana Fish, Wildlife and Parks

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.1112, 17.24.1113, 17.24.1114, 17.24.1115, 17.24.1116, 17.24.1117, 17.24.1118, 17.24.1119, 17.24.1120, 17.24.1121, 17.24.1125, 17.24.1129, 17.24.1131, 17.24.1132, 17.24.1133, 17.24.1134, 17.24.1135, 17.24.1136, 17.24.1137, 17.24.1138, 17.24.1141, 17.24.1142, 17.24.1143, 17.24.1144, 17.24.1145, 17.24.1146, 17.24.1147, 17.24.1148, 17.24.1201, 17.24.1202, 17.24.1206, 17.24.1207, 17.24.1208, 17.24.1209, 17.24.1210, 17.24.1211, 17.24.1213, 17.24.1214, 17.24.1215, 17.24.1216, 17.24.1219, 17.24.1220, 17.24.1221, 17.24.1222, 17.24.1223, 17.24.1224, 17.24.1225, 17.24.1226, 17.24.1227, 17.24.1228, 17.24.1246, 17.24.1247, 17.24.1248, 17.24.1249, 17.24.1250, 17.24.1251, 17.24.1252, 17.24.1253, 17.24.1254, 17.24.1255, 17.24.1260, 17.24.1261, 17.24.1262, 17.24.1263, 17.24.1264, 17.24.1265, 17.24.1266, 17.24.1267, 17.24.1301, 17.24.1302, 17.24.1303, 17.24.1304, 17.24.1307, 17.24.1308, 17.24.1309, 17.24.1801, 17.24.1802, 17.24.1803, 17.24.1804, 17.24.1805, 17.24.1806, 17.24.1807, 17.24.1808, 17.24.1809, 17.24.1810, 17.24.1815, 17.24.1816, 17.24.1817, 17.24.1818, 17.24.1819, 17.24.1820, 17.24.1824, and 17.24.1825 pertaining to transfer of rulemaking authority from the Board of Environmental Review to the Department of Environmental Quality	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 9, 2024, the Department of Environmental Quality (department) proposes to amend the above-stated rules. The department will be submitting a total of five notices for this rulemaking under MAR Notice No. 17-432; this is the fifth of the five.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on November 27, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking@mt.gov.

3. General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10- 106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.

4. The department proposes to amend the following rules, new matter underlined, deleted matter interlined. Please refer to the General Reason Statement above.

17.24.1112 BONDING: ADVERTISEMENT OF RELEASE APPLICATIONS AND RECEIPT OF OBJECTIONS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1113 BONDING: INSPECTION OF SITE AND PUBLIC HEARING OR INFORMAL CONFERENCE (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1114 BONDING: DEPARTMENTAL REVIEW AND DECISION ON BOND RELEASE APPLICATION (1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1115 BONDING: HEARING ON BOND RELEASE DECISION
(1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1116 BONDING: CRITERIA AND SCHEDULE FOR RELEASE OF BOND (1) though (8) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1117 BONDING: PROCEDURE FOR FORFEITURE In the event forfeiture of the bond is necessary, the department shall:
(1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1118 BONDING: EFFECT OF FORFEITURE (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1119 BONDING: CRITERIA FOR FORFEITURE (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1120 BONDING: DETERMINATION OF FORFEITURE AMOUNT
The department shall either:
(1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1121 BONDING: STATE AGENCIES AND POLITICAL SUBDIVISIONS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-223, MCA

17.24.1125 LIABILITY INSURANCE (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.1129 ANNUAL REPORT (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-237, MCA

17.24.1131 PROTECTION OF PARKS, HISTORIC SITES, AND OTHER LANDS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1132 AREAS UPON WHICH COAL MINING IS PROHIBITED: DEFINITIONS AND STANDARD FOR MEASUREMENT OF DISTANCES (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1133 AREAS UPON WHICH COAL MINING IS PROHIBITED: PROCEDURES FOR DETERMINATION (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1134 AREAS UPON WHICH COAL MINING IS PROHIBITED: PERMISSION TO MINE NEAR PUBLIC ROAD Whenever a proposed mining operation is to be conducted within 100 feet measured horizontally to the outside right-of-way line of any public road (except where mine access roads or haul roads join such right-of-way line), the department may permit mining to occur within 100 feet of the road if:

(1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1135 AREAS UPON WHICH COAL MINING IS PROHIBITED: RELOCATION OR CLOSURE OF PUBLIC ROAD Whenever an applicant proposes to relocate or close a public road to facilitate strip or underground mining operations, the road may not be relocated or closed until:

(1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1136 AREAS UPON WHICH COAL MINING IS PROHIBITED: WAIVER TO MINE NEAR DWELLING (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1137 AREAS UPON WHICH COAL MINING IS PROHIBITED: CONSULTATION WITH OTHER AGENCIES (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1138 AREAS UPON WHICH COAL MINING IS PROHIBITED: DESIGNATION PROCESS NOT AFFECTED (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, 82-4-228, MCA

17.24.1141 DESIGNATION OF LANDS UNSUITABLE: DEFINITION
For purposes of 82-4-228, MCA, the following definitions apply:
(1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1142 DESIGNATION OF LANDS UNSUITABLE: EXEMPTIONS
The requirements of ARM 17.24.1141update through 17.24.1148 do not apply to:
(1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1143 DESIGNATION OF LANDS UNSUITABLE: PROSPECTING ON DESIGNATED LANDS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1144 DESIGNATION OF LANDS UNSUITABLE: PETITION FOR DESIGNATION OR TERMINATION OF DESIGNATION (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1145 DESIGNATION OF LANDS UNSUITABLE: NOTICE AND ACTION ON PETITION (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1146 DESIGNATION OF LANDS UNSUITABLE: HEARINGS ON PETITION (1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1147 DESIGNATION OF LANDS UNSUITABLE: DECISION ON PETITION (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1148 DESIGNATION OF LANDS UNSUITABLE: DATA BASE AND INVENTORY SYSTEM (1) through (6) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1201 FREQUENCY AND METHODS OF INSPECTIONS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-205, 82-4-235, 82-4-237, 82-4-251, MCA

17.24.1202 CONSEQUENCES OF INSPECTIONS AND COMPLIANCE REVIEWS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-205, 82-4-231, 82-4-233, 82-4-235, 82-4-237, 82-4-251, 82-4-254, MCA

17.24.1206 NOTICES, ORDERS OF ABATEMENT, AND CESSATION ORDERS: ISSUANCE AND SERVICE (1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP, 82-4-251, MCA

17.24.1207 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: INFORMAL HEARINGS (1) through (7) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1208 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: EFFECT OF INABILITY TO COMPLY (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA

IMP: 82-4-251, MCA

17.24.1209 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: CONTINUATION OF HEALTH AND SAFETY RELATED ACTIVITIES (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1210 CESSATION ORDERS: ADDITIONAL AFFIRMATIVE OBLIGATIONS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1211 PROCEDURE FOR ASSESSMENT AND WAIVER OF CIVIL PENALTIES (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, 82-4-254, MCA
IMP: 82-4-254, MCA

17.24.1213 SUSPENSION AND REVOCATION OF PERMITS: DETERMINATION OF PATTERN OF VIOLATIONS (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1214 SUSPENSION AND REVOCATION OF PERMITS: PUBLIC NOTICE OF SHOW CAUSE ORDER (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1215 SUSPENSION AND REVOCATION OF PERMITS: SERVICE OF PROCESS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1216 SUSPENSION AND REVOCATION OF PERMITS: EFFECT OF SUSPENSION OR REVOCATION If a permit has been suspended or revoked, the permittee may not conduct any operations or prospecting on the permit area and shall:

(1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA

IMP: 82-4-251, MCA

17.24.1219 INDIVIDUAL CIVIL PENALTIES: PROCEDURE FOR ASSESSMENT (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1220 INDIVIDUAL CIVIL PENALTIES: PAYMENT (1) through (8) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1221 SMALL OPERATOR ASSISTANCE PROGRAM: PROGRAM SERVICES (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1222 SMALL OPERATOR ASSISTANCE PROGRAM: ELIGIBILITY FOR ASSISTANCE An applicant is eligible for assistance if he or she:
(1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1223 SMALL OPERATOR ASSISTANCE PROGRAM: FILING FOR ASSISTANCE Each applicant shall submit the following information to the department:
(1) through (6) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1224 SMALL OPERATOR ASSISTANCE PROGRAM: APPLICATION APPROVAL AND NOTICE (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1225 SMALL OPERATOR ASSISTANCE PROGRAM: DATA REQUIREMENTS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1226 SMALL OPERATOR ASSISTANCE PROGRAM: QUALIFICATION OF LABORATORIES, CONSULTANTS, AND CONTRACTORS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1227 SMALL OPERATOR ASSISTANCE PROGRAM: ASSISTANCE FUNDING (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1228 SMALL OPERATOR ASSISTANCE PROGRAM: APPLICANT LIABILITY (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.1246 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESPONSIBILITIES OF THE DIRECTOR The director shall:
(1) through (9) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1247 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESPONSIBILITIES OF EMPLOYEES State employees performing any duties or functions under the Act shall:
(1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1248 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: DEFINITIONS For purposes of ARM 17.24.1246 through 17.24.1254, the following definitions apply:
(1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1249 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: FILING OF STATEMENT (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1250 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: CONTENTS OF STATEMENT (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1251 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: EFFECT OF FAILURE TO FILE STATEMENT (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1252 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: GIFTS AND GRATUITIES (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1253 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESOLUTION OF PROHIBITED INTERESTS OF EMPLOYEES (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1254 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESOLUTION OF PROHIBITED FINANCIAL INTERESTS OF THE DIRECTOR (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1255 RESTRICTIONS ON FINANCIAL INTERESTS: MULTIPLE INTEREST ADVISORY BOARDS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-254, MCA

17.24.1260 REQUIREMENTS FOR THE CONDUCT OF BLASTING OPERATIONS (1) through (5) remain the same.

AUTH: ~~82-4-204(4),~~ 82-4-205, 82-4-205(7), 82-4-231(10)(e), MCA
IMP: 82-4-231(10)(e), MCA

17.24.1261 CERTIFICATION OF BLASTERS (1) through (5) remain the same.

AUTH: ~~82-4-204(4),~~ 82-4-205, 82-4-205(7), 82-4-231(10)(e), MCA
IMP: 82-4-231(10)(e), MCA

17.24.1262 BLASTER TRAINING COURSES (1) remains the same.

AUTH: ~~82-4-204(4),~~ 82-4-205, 82-4-205(7), 82-4-231(10)(e), MCA
IMP: 82-4-231(10)(e), MCA

17.24.1263 SUSPENSION OR REVOCATION OF BLASTER CERTIFICATION (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, 82-4-231, MCA
IMP: 82-4-231, MCA

17.24.1264 THE DEPARTMENT'S OBLIGATIONS REGARDING THE APPLICANT/VIOLATOR SYSTEM (1) through (7) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1265 DEPARTMENT ELIGIBILITY REVIEW (1) through (6) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1266 QUESTIONS ABOUT AND CHALLENGES TO OWNERSHIP OR CONTROL FINDINGS (1) through (9) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1267 INFORMATION REQUIREMENTS FOR PERMITTEES (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.1301 MODIFICATION OF EXISTING PERMITS: ISSUANCE OF REVISIONS AND PERMITS (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, 82-4-222, MCA

17.24.1302 NONCONFORMING STRUCTURE (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.1303 RULES APPLICABLE TO COAL OPERATIONS ONLY
(1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-233, 82-4-235, MCA

17.24.1304 APPLICABILITY OF FEDERAL LAW (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-202, MCA

17.24.1307 LITIGATION EXPENSES: WHEN DEPARTMENT MAY AWARD
(1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1308 LITIGATION EXPENSES: FILING OF PETITION (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1309 LITIGATION EXPENSES: CONTENTS OF PETITION AND ANSWER (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-251, MCA

17.24.1801 DEFINITIONS (1) and (2) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1802 APPLICABILITY DETERMINATION (1) through (4) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1803 APPLICATION FOR PERMIT: GENERAL REQUIREMENTS AND PROCEDURES (1) through (6) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1804 CONTENTS OF APPLICATION: MAP A current 7.5 minute USGS "topographic" map shall be submitted in all cases where a map depicting surface conditions is required. If a USGS topographic map is unavailable an equivalent will be acceptable. The map or maps submitted shall clearly:

(1) through (10) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1805 CONTENTS OF APPLICATION: COMPLIANCE INFORMATION Each application shall contain the following information:

(1) through (10) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1806 CONTENTS OF APPLICATION: MINERAL AND OVERBURDEN INFORMATION (1) and (2) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1807 CONTENTS OF APPLICATION: STUDIES AND INVENTORIES The applicant shall submit, as a minimum:

(1) through (10) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-112, MCA

17.24.1808 CONTENTS OF APPLICATION: BLASTING INFORMATION

(1) remains the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1809 CONTENTS OF APPLICATION: MINING AND RECLAMATION PLANS The applicant shall also provide to the department a general mining and reclamation plan for the proposed mining operation. These plans shall, as a minimum, include the following topical discussions:

(1) and (2) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1810 CONTENTS OF APPLICATION: MINE SITE LOCATION INFORMATION (1) remains the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1815 PERFORMANCE STANDARDS The operator shall:
(1) through (12) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-125, MCA

17.24.1816 RECLAMATION PLAN: ADDITIONAL SPECIFIC REQUIREMENTS The applicant shall submit construction and reclamation plans for all intended preparatory work. Such plans shall be capable of meeting all applicable requirements which would be included in an application for permit under Title 82, chapter 4, part 2, MCA. Such plans shall include:
(1) through (7) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-122, MCA

17.24.1817 WATER QUALITY: OTHER LAWS, NONDEGRADATION
(1) and (2) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-125, MCA

17.24.1818 WATER QUALITY: IMPOUNDMENT (1) through (5) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-125, MCA

17.24.1819 WATER QUALITY: TREATMENT (1) and (2) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-125, MCA

17.24.1820 WATER QUALITY: DRAINAGE (1) through (4) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-125, MCA

17.24.1824 TOPSOILING (1) through (5) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA

IMP: 82-4-125, MCA

17.24.1825 PLANTING AND REVEGETATION (1) through (12) remain the same.

AUTH: ~~82-4-111,~~ 82-4-112, MCA
IMP: 82-4-125, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking @mt.gov, and must be received no later than 11:59 p.m., December 1, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., November 23, 2023.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 259 persons based on the interested parties list of 2,591 individuals.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 5, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Angela Colamaria*
ANGELA COLAMARIA
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 17.55.110 pertaining to third party remedial actions at order sites	) NOTICE OF PROPOSED REPEAL)) (STATE SUPERFUND))) NO PUBLIC HEARING) CONTEMPLATED

TO: All Concerned Persons

1. On March 8, 2024, the Department of Environmental Quality (department) proposes to repeal the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 1, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620; telephone (406) 444-1388; fax (406) 444-4386; or e-mail Loryn.Johnson2@mt.gov.

3. The department proposes to repeal the following rule:

17.55.110 THIRD-PARTY REMEDIAL ACTIONS AT ORDER SITES

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-706, MCA

REASON: The proposed repeal eliminates third party work plan requirements at Comprehensive Environmental Cleanup and Responsibility Act (CECRA) order sites following the removal of such requirements in the authorizing statute. The third party work plan requirement contained in 75-10-711(9), MCA, was removed during the 68th Legislative Session when House Bill 88 was signed into law by Governor Gianforte on April 18, 2023. Therefore, the third party work plan requirements in ARM 17.55.110 are no longer needed or permitted.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620; telephone (406) 444-1388; fax (406) 444-4386; or e-mail Loryn.Johnson2@mt.gov, and must be received no later than 5:00 p.m. on December 8, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to the department at the above address no later than 5:00 p.m. on December 8, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be five persons based on the number of persons on the State Superfund Stakeholders list. It is possible other entities may be directly affected by the proposed action, but it would be difficult to definitively identify them so the department has conservatively used its specific list of identified State Superfund Stakeholders.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 4, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rule will not significantly and directly impact small businesses.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State October 24, 2023.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to pharmacist prescribing	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 28, 2023, at 1:00 p.m., a public hearing will be held via remote conferencing to consider the proposed adoption of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/83859050604
Meeting ID: 838 5905 0604, Passcode: 476712
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 838 5905 0604, Passcode: 476712

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 21, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I PHARMACIST PRESCRIBING: GENERAL REQUIREMENTS

(1) Pursuant to [SB 112 (1), L. 2023] and these rules, any pharmacist may independently prescribe.

(2) The pharmacist prescribing under this rule must obtain adequate information about the patient's health status to make appropriate decisions based on the applicable standard of care and the best available evidence. For each drug or device the pharmacist intends to prescribe, the pharmacist must maintain a patient assessment based on current clinical guidelines, best practice standards, or evidence-based research findings, as applicable.

(3) The pharmacist must document an appropriate follow-up care plan, including any monitoring parameters, as indicated by the patient assessment.

(4) The pharmacist must inquire about the identity of the patient's primary care provider or provider of record. If a provider is identified, the pharmacist must document the information and notify the provider at the earliest reasonable time following the prescribing of a drug or device.

(5) The pharmacist must maintain documentation adequate to justify the care provided, including, but not limited to the information collected as part of the patient

assessment, the prescription record, any notification provided as required under this rule, and the follow-up care plan. Records must be made available for inspection by the board.

AUTH: 37-7-201, MCA
IMP: [Senate Bill 112 (2023)]

REASON: The 2023 Legislature passed Senate Bill (SB) 112, allowing for independent prescribing authority for pharmacists in limited situations. Previously, pharmacists could prescribe only as part of a collaborative practice agreement and could issue emergency refills of prescriptions in limited situations. It is therefore necessary to set standards for patient care, evaluation, recordkeeping, and provider notification required of pharmacists prescribing under SB 112's authority.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 1, 2023.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 9, 2023, by email.

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule adoption proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
PAUL BRAND, PHARMACIST, PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI pertaining to property management licensure	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 30, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/84013158111
Meeting ID: 840 1315 8111, Passcode: 776823
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 840 1315 8111, Passcode: 776823

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 22, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: The 2023 Montana Legislature enacted Chapter 482, Laws of 2023 (Senate Bill 455), an act generally revising laws related to realty regulation and transferring regulatory oversight of property managers from the Board of Realty Regulation (board) to a department program. The bill was signed by the Governor on May 8, 2023, and is effective October 1, 2023. It is reasonably necessary to adopt new, updated program rules to implement the bill. The board will repeal all 14 property management rules in a separate rulemaking.

In support of the Governor's Red Tape Relief Initiative, the department is comprehensively reviewing all administrative rules of professional licensing boards and programs administratively attached to the department. The new program rules update to current standards and procedures, and eliminate unnecessary, redundant, and overburdensome regulations and those duplicated in statute. The new rules are written for more consistency, simplicity, better organization, and ease of use for customers and staff. The more streamlined rules will also increase department efficiencies by further standardizing procedures used among all licensing boards and programs.

4. The proposed new rules are as follows:

NEW RULE I FEE SCHEDULE

(1) Original application	$50
(2) Renewal	50
(3) Prelicensing course application	150

(4) All fees are nonrefundable.

(5) Examination fees are paid directly to the testing service.

AUTH: 37-56-102, MCA
IMP: 37-56-102, MCA

REASON: It is reasonable to strike fees for inactive status as the department is eliminating inactive status for this program. The historically consistent small number of inactive property management licensees does not justify the staffing and costs associated with monitoring and renewing them.

It is reasonably necessary to eliminate the fee for reinstatement of suspended or revoked licenses as no other board or program charges such a fee. Prelicensing course approval lasts for three years and a new updated application is required. Course approval is not renewable. Fees for CE course approval are stricken to align with NEW RULE V and the elimination of CE course preapproval. The remaining fees are not changing.

The department estimates the eliminated fees will affect approximately 31 individuals and result in a $775 reduction in annual revenue from prior years with the board.

NEW RULE II APPLICATION TIMELINE (1) Applicants must:

(a) complete a 30-hour approved property management prelicensing course within 24 months preceding application;

(b) pass the licensure examination; and

(c) apply for licensure within 12 months of the examination date. Failure to do so will invalidate exam results.

AUTH: 37-56-102, MCA
IMP: 37-56-102, 37-56-105, MCA

REASON: This simplified new rule more clearly sets forth property management application timelines but does not change the timelines.

Licensure applications are distinct and separate. There is no need to state that applicants must comply with all necessary licensure requirements.

NEW RULE III TRUST ACCOUNTS (1) Property managers who receive any deposits, rent payments, or other monies on behalf of other persons must deposit such funds in a trust account per 37-56-101, MCA, and maintain the account according to this rule.

(2) Trust accounts must be:

(a) liquid;

(b) readily accessible;

(c) insured in Montana financial institutions;

(d) identified as trust accounts; and

(e) reconciled each month having activity.

(3) Trust funds cannot be:

(a) maintained in sweep accounts; or

(b) invested in certificates of deposit, repurchase agreements, or any other method that places funds at risk.

(4) Property managers:

(a) may separately maintain multiple trust accounts;

(b) are responsible for all funds in and maintenance of their trust accounts;

(c) may delegate authority for trust account maintenance to another licensed property manager. Both property managers are responsible for failure to comply with trust account requirements; and

(d) must deposit monies belonging to others into a trust account within three business days, unless otherwise provided in the lease or rental agreement.

(5) Trust funds may be maintained in interest-bearing accounts with interest payable to the property manager or any other person. Interest payable to a property manager must be identified as consideration for services performed and are personal funds unless otherwise designated.

(6) Property managers may deposit and hold in a trust account up to $1000 of personal funds that include interest accrued to the property manager.

(a) Personal funds may be distributed for trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager.

(b) Money due the property manager must be withdrawn within ten business days once due and payable.

(7) When managing one's own real estate, property managers must deposit security deposits in a trust account. Rents and disbursements are managed as follows:

(a) Property managers owning 100 percent of the real estate are not required to place rents in a trust account but may do so.

(b) Property managers owning less than 100 percent of the real estate must place all rents in a trust account.

(c) If rents are included in a trust account, all disbursements must be described in the property management agreement.

(d) Disbursements may not be considered personal indebtedness if used for the maintenance of the property itself.

(8) Property managers must maintain complete and chronological records of all trust account funds received and disbursed including personal funds per (6). Each record must include a running balance and clearly identify for all transactions:

(a) dates;

(b) parties, payees, and sources of funds; and

(c) amounts received, disbursed, and deposited.

(9) When a property management agreement is terminated, a rental agreement is still in effect, and the property manager is holding tenant funds, the property manager must:

(a) notify the tenant, in writing and within five business days of termination that:

(i) the agreement is terminated; and

(ii) funds and current tenant files will be transferred to the property owner or designee within 30 days of the termination;

(b) provide the name and contact information of the person receiving the transfer; and

(c) within 30 days of termination, transfer all funds and current tenant files to the property owner or designee.

(10) Property managers must maintain the following documents for at least eight years from the property management agreement termination even if the property manager sells or ceases to operate the business:

(a) trust account records:

(b) complete files of properties managed; and

(c) all related documents.

(11) Trust account records must be maintained to facilitate auditing.

AUTH: 37-1-319, 37-56-102, MCA
IMP: 37-1-319, 37-56-106, MCA

REASON: This new rule updates to more general and reasonable requirements for trust accounts. The department is amending these standards to simplify and provide clear guidance regarding current trust account maintenance without overly burdensome regulation.

The department is removing the cautionary provision regarding potential discipline following a negative account balance from a dishonored deposit. Department prosecutors have never seen a case involving this section and do not believe a reasonable cause finding would result from this scenario.

Commingling of trust account funds is allowed, within the parameters of this rule. It is necessary to remove old language to eliminate potential confusion or conflict.

The department is removing outdated provisions regarding the regulation of real estate firms which do not apply to the property managers' program.

With the expansion of secure, acceptable methods of electronic fund transfer, the department concluded there is no need to specify or limit fund disbursement methods.

The department determined there is no need to specify the actual documents to keep as trust account records. The department trusts licensees to maintain adequate records for each account and situation.

The requirement to comply with department inquiries and audits is being relocated to NEW RULE VI on unprofessional conduct.

Property managers are required to keep accurate and adequate records to document all trust account activities. There is no need to require specific ledgers/records for property owners, tenants, or personal funds.

NEW RULE IV PRELICENSING COURSE REQUIREMENTS (1) Course approval is valid for three years and may be revoked for cause.

(2) To receive approval, courses must include the following topics:

(a) trust accounts;

(b) accounting procedures;
(c) landlord tenant law (Title 70, chapters 24 and 25, MCA);
(d) federal and state fair housing laws;
(e) Americans with Disabilities Act;
(f) state licensing law and rules;
(g) contract law;
(h) leasing principles;
(i) agency; and
(j) definitions and terms commonly used in the industry.

(3) Additionally, online courses must have current Association of Real Estate License Law Officials (ARELLO) certification. Approval is invalidated if ARELLO certification is discontinued for any reason.

AUTH: 37-56-102, MCA
IMP: 37-56-102, 37-56-105, MCA

REASON: The department is relocating property management licensing requirements to NEW RULE II. Because property managers collect and hold tenants' security deposits in trust accounts, it is reasonably necessary to include Title 70, chapter 25, MCA (regarding residential tenants' security deposits) in prelicensing course content.

The department will no longer approve instructors. The department believes that course providers will ensure instructors are adequately trained to provide quality instruction of an approved course.

There is no reason to regulate course timelines and breaks. Approved courses must include the required topics, and applicants must obtain a minimum of 30 hours of instruction as for property management licensure.

Since applicants must satisfy all requirements before applying for licensure, it is not necessary to remind them to verify a course's approval before taking it.

NEW RULE V CONTINUING EDUCATION (1) Renewing licensees must complete a minimum of 12 hours of property management CE (continuing education) annually. Licensees must select quality programs that:

(a) contribute to professional knowledge and competence;
(b) contain significant intellectual or practical content; and
(c) are germane to the property management profession.

(2) New licensees are only required to complete four hours of property management trust account CE by their first renewal date. If no course occurs by the first renewal date, the licensee must complete the course when it is next offered.

(3) Licensees must maintain adequate CE documentation and make the documentation available upon request.

(4) Licensees found noncompliant with CE requirements may be subject to administrative suspension.

AUTH: 37-56-102, MCA
IMP: 37-1-420, 37-56-102, MCA

REASON: The department is adopting this new rule to combine all continuing education (CE) provisions in a single location. The new rule clearly sets forth CE requirements and aligns with standardized procedures used by all licensing programs and boards.

As a department program, property managers' CE now falls under 37-1-420, MCA. The department will not preapprove CE, and licensees must select appropriate courses that qualify under the standards of this rule. Compliance is monitored by a random audit process conducted on renewed licensees.

NEW RULE VI UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-410, MCA, it is unprofessional conduct for property managers to:

(a) violate a federal, state, or local law or rule relating to the conduct of the profession;

(b) engage the services of any person or entity on behalf of a principal, third-party, or other person, without:

(i) informing and obtaining consent from the person obligated to pay for the services; and

(ii) disclosing any family relationship, financial relationship, and/or financial interest that the licensee or the licensee's business may have in the person or entity being engaged;

(c) manage property owned by another person or entity without a written property management agreement in place, signed by the owner;

(d) accept, give, or charge an undisclosed commission, rebate, or profit on expenditures made for a principal;

(e) fail to adequately supervise employees;

(f) fail to cooperate with or respond to a department request;

(g) practice while one's license has expired or terminated. Receiving payments for the sale of the licensee's property management business without a valid license is not considered practicing as a property manager; and

(h) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

AUTH: 37-56-102, MCA
IMP: 37-1-410, 37-56-102, MCA

REASON: This new rule updates, reorganizes, and streamlines the unprofessional conduct for licensed property managers. It is reasonable to simplify the rule by replacing overly specific verbiage with more broadly applicable statements and eliminate the more detailed and confusing "laundry list." The new rule also eliminates many unnecessary duplications with the unprofessional conduct statute, 37-1-410, MCA, which applies to all department program licensees and license applicants.

Instead of stating specific state or federal regulations to follow, the department is including (1)(a) to require licensees comply with all applicable laws and regulations. These amendments will also facilitate the disciplinary processes by utilizing standard language among the licensing boards and programs.

It is reasonably necessary to remove overly specific and unnecessarily regulatory provisions regarding property management agreements and disclosing licensee status in practice. This behavior is considered unprofessional conduct in 37-1-410, MCA, as well as being outside generally accepted standards of property management.

The guidance on offender proximity disclosure is eliminated as unnecessary. All complaints are assessed and either processed or dismissed on a case-by-case basis with specific parties and circumstances. It is not helpful to excuse actions in any single practice situation.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 1, 2023.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 25, 2023, by electronic mail.

9. Pursuant to 2-4-111, MCA, the agency has determined that the rule adoptions proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.219.301, 24.219.401, 24.219.421, 24.219.422, 24.219.431, 24.219.435, 24.219.501, 24.219.504, 24.219.601, 24.219.604, 24.219.701, 24.219.704, 24.219.907, 24.219.912, 24.219.1001, 24.219.1002, 24.219.1003, 24.219.1005, 24.219.1011, 24.219.1201, 24.219.1205, 24.219.1211, 24.219.1213, 24.219.1217, 24.219.2301, 24.219.5006, 24.219.5008, and 24.219.5010, the adoption of NEW RULES I through III, and the repeal of ARM 24.219.415, 24.219.423, 24.219.502, 24.219.505, 24.219.508, 24.219.512, 24.219.602, 24.219.605, 24.219.608, 24.219.612, 24.219.702, 24.219.705, 24.219.706, 24.219.712, 24.219.923, 24.219.1004, 24.219.1014, 24.219.1017, 24.219.1020, 24.219.1023, 24.219.1026, 24.219.1029, 24.219.1032, 24.219.1035, 24.219.1038, 24.219.1209, 24.219.1215, 24.219.2404, 24.219.5005, 24.219.5007, and 24.219.5013, and 24.219.5020 pertaining to the board of behavioral health	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 30, 2023, at 8:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89790786628
Meeting ID: 897 9078 6628, Passcode: 207663
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 897 9078 6628, Passcode: 207663

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 22, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.219.301 DEFINITIONS ~~(1) "Advanced counseling practicum" for purpose of the practicum obtained during the post-graduate degree program in 37-23-202, MCA, means:~~

~~(a) supervision by licensed program faculty which includes:~~

~~(i) a minimum of 30 hours individual face-to-face consultation and review with supervisor; and~~

~~(ii) a minimum of 45 hours small group supervisory consultation with supervisor and peers in practicum program; and~~

~~(b) a minimum of 200 clock hours of service to clients which includes:~~

~~(i) a minimum of 80 hours offering face-to-face direct service to individual, family, and group clients; and~~

~~(ii) an additional 45 hours which may include any of the above plus audio and videotape review, two-way mirror observations, research, writing case notes, collateral contacts, and any other nonspecified activities deemed appropriate by the practicum supervisor to enhance the student's expertise in providing services to the client population.~~

~~(2)~~ (1) "Behavioral health disorder" means a wide range of mental health conditions or disorders that affect mood, thinking, and behavior that impair the individual's ability to build or maintain satisfactory interpersonal relationships and to manage daily functioning.

~~(3)~~ (2) "Candidate" means an individual as defined in [HB 137 (2023) Section 9]~~:~~

~~(a) "LAC candidate" means an individual as defined in 37-35-102, MCA;~~

~~(b) "LBSW candidate" means an individual as defined in 37-22-102, MCA;~~

~~(c) "LCPC candidate" means an individual as defined in 37-23-102, MCA;~~

~~(d) "LCSW candidate" means an individual as defined in 37-22-102, MCA;~~

~~(e) "LMFT candidate" means an individual as defined in 37-37-102, MCA; and~~

~~(f) "LMSW candidate" means an individual as defined in 37-22-102, MCA~~.

(4) and (5) remain the same but are renumbered (3) and (4).

~~(6)~~ (5) "Clinical setting" for purposes of LCPC experience requirements means any public and/or private agency whose primary functions are to provide services as defined in [House Bill 137 (2023), Section 2 (11)]~~:~~

~~(a) conducting psychosocial assessments and diagnoses for the purpose of establishing treatment goals and objectives;~~

~~(b) planning, implementing, and evaluating treatment plans that use~~

~~treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health, social functioning, or the functioning of established social units;~~

~~(c) selecting, administering, scoring, and interpreting psychosocial assessment instruments to assess personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with or adapting to changing life situations;~~

~~(d) implementing counseling treatment interventions using those cognitive, affective, behavioral sciences that are specifically implemented in the context of a therapeutic relationship; or~~

~~(e) evaluating information to identify needs or problems of an individual or social units to determine the advisability of referral to other specialists, informing the individual(s) of the judgment, and communicating as requested or considered appropriate with the referral sources~~.

(7) through (13) remain the same but are renumbered (6) through (12).

~~(14) "Gambling disorder" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress.~~

(15) remains the same but is renumbered (13).

~~(16)~~ (14) "LAC" means licensed addiction counselor licensed under Title 37, chapter ~~35~~ 39, MCA.

~~(17)~~ (15) "LBSW" means licensed baccalaureate social worker licensed under Title 37, chapter ~~22~~ 39, MCA.

~~(18)~~ (16) "LCPC" means licensed clinical professional counselor licensed under Title 37, chapter ~~23~~ 39, MCA.

~~(19)~~ (17) "LCSW" means licensed clinical social worker licensed under Title 37, chapter ~~22~~ 39, MCA.

~~(20)~~ (18) "LMFT" means licensed marriage and family therapist licensed under Title 37, chapter ~~37~~ 39, MCA.

~~(21)~~ (19) "LMSW" means licensed master's social worker licensed under Title 37, chapter ~~22~~ 39, MCA.

(22) and (23) remain the same but are renumbered (20) and (21).

~~(24)~~ (22) "Recovery" from a behavioral health disorder in subchapter 9 of these rules means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential. Applicants must attest that recovery does not include any period of incarceration, or hospitalization or any inpatient admission related to a behavioral health disorder that exceeds 72 hours, within the two years immediately preceding application. Applicants with a diagnosed chemical dependency must be two years into sustained remission as defined in the Diagnostic and Statistical Manual of Mental Disorders, meaning the applicant has not had any symptoms except a strong desire or urge to drink alcohol.

(25) through (27) remain the same but are renumbered (23) through (25).

~~(28)~~ (26) "Supervised work experience" means the requirements ~~described in ARM 24.219.504, 24.219.604, 24.219.704, or 24.219.5008~~ where a candidate gains minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development

and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients and colleagues.

(29) remains the same but is renumbered (27).

AUTH: 37-1-131, ~~37-22-201, 37-35-103, 37-38-202,~~ [House Bill 137 (2023), Section 3], MCA

IMP: 37-1-131, ~~37-22-102, 37-22-103, 37-22-201, 37-22-313, 37-23-102, 37-23-202, 37-23-213, 37-35-102, 37-35-103, 37-35-202, 37-37-102, 37-37-205, 37-38-102, 37-38-202,~~ [House Bill 137 (2023), Section 5], [House Bill 137 (2023), Section 9], [House Bill 137 (2023), Section 10], [House Bill 137 (2023), Section 11], [House Bill 137 (2023), Section 12], [House Bill 137 (2023), Section 13], [House Bill 137 (2023), Section 14], MCA

REASON: The board is removing the definitions of "advanced counseling practicum" and "gambling disorder" as the terms no longer appear in statute. The board is repealing definitions that restate statute and is adding the requirement that CBHPSS be in recovery for a period of two years at the time of application after inadvertently removing it from rule in a prior rule package.

24.219.401 FEE SCHEDULE (1) through (5) remain the same.

AUTH: ~~37-1-134, 37-22-201, 37-22-307, 37-22-308, 37-35-103, 37-35-202, 37-37-201, 37-38-202,~~ [House Bill 137 (2023), Section 4], MCA

IMP: ~~37-1-134,~~ 37-1-141, ~~37-22-302, 37-22-307, 37-22-308, 37-23-206, 37-35-202, 37-37-201, 37-38-202,~~ [House Bill 137 (2023), Section 4], MCA

24.219.421 SUPERVISOR QUALIFICATIONS (1) ~~LCSW, LMSW, LBSW, LCPC, LMFT, and LAC~~ Licensure candidates and CBHPSS must be supervised per the requirements of this rule and ARM 24.219.504, 24.219.604, 24.219.704, and 24.219.5008.

(2) ~~LCSW, LCPC, or LMFT candidate~~ Except as provided below, all supervisors must:

(a) have an active license in good standing in the jurisdiction in which the supervision is occurring ~~as an LCSW, LCPC, LMFT, licensed psychologist, or licensed and board-certified psychiatrist~~; and

(b) remains the same.

(3) LCSW, LCPC, and LMFT candidates must be supervised by an LCSW, LCPC, LMFT, licensed psychologist, or licensed and board-certified psychiatrist.

~~(3)~~(4) LMSW candidate supervisors must be licensed as an LCSW or LMSW.~~:~~

~~(a) have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW or LMSW; and~~

~~(b) meet one of the below criteria:~~

~~(i) have been licensed in their respective disciplines for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

~~(4)~~(5) LBSW candidate supervisors must have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW, LMSW, or LBSW.

~~(a) If the supervisor is an LCSW or LMSW the supervisor must also meet one of the below criteria:~~

~~(i) have been licensed in that discipline for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

~~(b)~~ If the supervisor is an LBSW the supervisor must have been licensed for at least three years as an LBSW. An LBSW may not take supervision courses to qualify to supervise LBSW candidates.

~~(5)~~ (6) LAC candidate supervisors must be:

(a) remains the same.

(b) trained in a related field. If trained in a related field:

(i) the supervisor must have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision; and

(ii) the supervisor must have training equivalent to that described in ARM 24.219.5006(2)(b)~~; and~~

~~(iii) the board will evaluate each individual on a case-by-case basis~~.

~~(6)~~ (7) CBHPSS supervisors must~~:~~

~~(a)~~ have an active license in good standing in the jurisdiction in which the supervision is occurring as ~~an LCSW, LCPC, LMFT, LAC, physician, psychologist, or an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing ;and~~ a mental health professional as defined by [HB 137 (2023), Section 2].

~~(b) meet one of the below criteria:~~

~~(i) have been licensed in their respective discipline for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

(7) remains the same but is renumbered (8).

AUTH: 37-1-131, ~~37-22-201, 37-35-103,~~ [House Bill 137 (2023), Section 4], MCA,

IMP: 37-1-131, ~~37-22-102, 37-22-301, 37-22-307, 37-22-308, 37-23-102, 37-23-202, 37-35-102, 37-35-103, 37-35-202, 37-37-102, 37-37-201, 37-38-202,~~ [House Bill 137 (2023), Sections 5 and 9 through 14], MCA

REASON: The board is amending this rule by combining repetitive subsections and removing the requirement that non-LAC supervisors of addiction counselor

candidates be approved by the board prior to beginning supervision to allow for quicker entry into practice. In the event staff is unable to decide if a proposed supervisor is qualified, the board will still review the request.

24.219.422 GENERAL SUPERVISION AND RECORDKEEPING REQUIREMENTS ~~– LCSW, LMSW, LBSW, LCPC, LMFT, LAC, AND CANDIDATES AND CBHPSS~~ (1) remains the same.

(2) Candidates must maintain the following records for a minimum of seven years from the date of licensure ~~as an LCSW, LMSW, LBSW, LCPC, LMFT, or LAC~~ or seven years from the expiration of their candidate license if they do not obtain a Montana ~~LCSW, LMSW, LBSW, LCPC, LMFT, or LAC~~ license:

(a) through (4) remain the same.

(5) Supervisors ~~of candidates and CBHPSS~~ must:

(a) and (b) remain the same.

(c) maintain records showing licensees have met the supervision requirements in this rule ~~and ARM 24.219.423~~ for a minimum of seven years after the date the supervisor ceased to supervise the candidate or CBHPSS.

(6) remains the same.

(7) The ~~board~~ department may request records from candidates and CBHPSS at any time.

(8) The ~~board~~ department may annually randomly audit a board-determined percentage of candidates and CBHPSS who have renewed their licenses to evaluate:

(a) remains the same.

(b) that the supervision requirements of this rule ~~and ARM 24.219.423,~~ and ARM 24.219.504, 24.219.604, 24.219.704, or 24.219.5008 are being met.

(9) A candidate or CBHPSS cannot practice without a supervisor as described in this chapter.

(10) When there is a change in supervisor, the following individuals must notify the board no later than 20 business days following the change using forms provided by the department:

(a) the candidate or CBHPSS;

(b) the new supervisor; and/or

(c) the individual ceasing to supervise a candidate.

(11) The supervisor, candidate, or CBHPSS may be subject to disciplinary action for failure to report a change in supervisor.

(12) A candidate must provide an update to the department within 20 business days if there is a substantial change in the candidate's training and supervision plan. An updated training and supervision plan or a change in supervisor does not require additional approval unless there is reason to believe the update does not conform to the board's training and supervision requirements.

(13) The candidate or CBHPSS and supervisors are responsible for ensuring compliance with the statutes, rules, and standards pertaining to the practice at all times.

AUTH: 37-1-131, ~~37-22-201, 37-35-103, 37-35-202,~~ [House Bill 137 (2023), Section 4], MCA,

IMP: 37-1-131~~, 37-22-301, 37-22-307, 37-22-308, 37-23-202, 37-35-103, 37-35-202, 37-37-201, 37-38-202,~~ [House Bill 137 (2023), Sections 5, 9 through 14], MCA

24.219.431 ANNUAL CANDIDATE REGISTRATION ~~– LCSW, LMSW, LBSW, LCPC, LMFT, AND LAC CANDIDATES~~ (1) LCSW, LCPC, and LMFT candidates shall:

(a) register annually ~~by no later than December 31~~; and

(b) only be allowed to register annually five times unless approved ~~by the board~~ to register more than five times. Candidates requesting an additional registration must submit a request including but not limited to an explanation as to why an additional registration is needed to complete the requisite supervised work experience.

(2) LMSW, ~~and~~ LBSW, and LAC candidates shall:

(a) register annually ~~by no later than December 31~~; and

(b) only be allowed to register annually three times unless approved ~~by the board~~ to register more than three times. Candidates requesting an additional registration must submit a request including but not limited to an explanation as to why an additional registration is needed to complete the requisite supervised work experience.

~~(3) LAC candidates shall:~~

~~(a) register annually by no later than June 30; and~~

~~(b) only be allowed to register annually three times unless approved by the board to register more than three times. Candidates requesting an additional registration must submit a request including but not limited to an explanation as to why an additional registration is needed to complete the requisite supervised work experience.~~

(4) remains the same but is renumbered (3).

AUTH: 37-1-131, ~~37-22-201, 37-35-103, 37-35-202,~~ [House Bill 137 (2023), Section 4], MCA,

IMP: 37-1-131, ~~37-22-313, 37-23-213, 37-35-202, 37-37-205,~~ [House Bill 137 (2023), Section 9], MCA

REASON: The board is removing the requirement that the board review every request to extend a candidacy to allow for renewals in between board meetings, as the board has approved nearly every request that has come before it. Staff will bring extension requests to the board if staff is unable to determine whether a request should be granted. Further, the board is combining similar provisions within the rule to eliminate redundancy.

24.219.435 CONTINUING EDUCATION REQUIREMENTS ~~– LCSW, LMSW, LBSW, LCPC, LMFT, LAC, and CBHPSS~~ (1) and (2) remain the same.

(3) Licensees holding more than one type of license must ~~obtain the requisite 20 hours of CE for each license~~ demonstrate completion of 20 hours of CE with each license.

(4) Of the 20 hours:

(a) a minimum of two hours must relate to suicide prevention for a licensee's first renewal and every three years thereafter; and

(b) through (8) remain the same.

~~(9) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.~~

(10) remains the same but is renumbered (9).

~~(11)~~ (10) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the ~~board~~ department.

AUTH: 37-1-131, 37-1-319, ~~37-22-201, 37-35-103, 37-38-202,~~ [HB 137 (2023) Section 3], MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, ~~37-22-201, 37-35-103, 37-38-202,~~ [HB 137 (2023) Section 3], MCA

REASON: The board is striking (9) and adopting NEW RULE III to align with standard department policy on administrative suspensions. Further, the board is removing the requirement that the board consider every hardship exemption in favor of allowing staff to process exemptions. The board will still review exemption requests that staff is unable to determine whether a hardship exists. Finally, the board is updating the continuing education requirement for suicide education after determining it was not necessary for every renewal cycle.

24.219.501 LCSW, LMSW, AND LBSW ~~LICENSE~~ EDUCATION REQUIREMENTS ~~– ORIGINAL APPLICANTS~~ (1) Applicants for LCSW, LMSW, and LBSW licensure ~~not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation~~ must have a degree from a program accredited by the Council on Social Work Education.

~~(2) Applicants for LCSW licensure must meet the following requirements:~~

~~(a) have a degree that meets the requirements in 37-22-301, MCA, which include:~~

~~(i) a program accredited by the Council on Social Work Education (CSWE); or~~

~~(ii) a program currently in CSWE candidacy status;~~

~~(b) have completed supervised post-degree work that meets the requirements in 37-22-301, MCA, and ARM 24.219.504;~~

~~(c) have passed an examination as described in ARM 24.219.502 within four years of the date of application;~~

~~(d) have completed a Federal Bureau of Investigation fingerprint background check per 37-22-301, MCA, within six months of the application date; and~~

~~(e) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

~~(3) Applicants for LMSW licensure must meet the following requirements:~~

~~(a) have a degree that meets the requirements in 37-22-308, MCA;~~

~~(b) have completed supervised post-degree work that meets the requirements in 37-22-308, MCA, and ARM 24.219.504;~~

~~(c) have passed an examination as described in ARM 24.219.502 within four years of the date of application;~~

~~(d) have completed a Federal Bureau of Investigation fingerprint background check per 37-22-308, MCA, within six months of the application date; and~~

~~(e) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction~~.

~~(4) Applicants for LBSW licensure must meet the following requirements~~:

~~(a) have a degree that meets the requirements in 37-22-307, MCA;~~

~~(b) have completed supervised post-degree work that meets the requirements in 37-22-307, MCA, and ARM 24.219.504;~~

~~(c) have passed an examination as described in ARM 24.219.502 within four years of the date of application;~~

~~(d) have completed a Federal Bureau of Investigation fingerprint background check per 37-22-308, MCA, within six months of the application date; and~~

~~(e) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

~~(5) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.~~

AUTH: 37-1-131, ~~37-22-201, 37-22-307, 37-22-308,~~ [HB 137 (2023) Section 3], MCA

IMP: 37-1-131, ~~37-22-301, 37-22-307, 37-22-308,~~ [HB 137 (2023) Section 10], MCA

REASON: The board is combining application rules into NEW RULE I to allow for ease of understanding. The accreditation standard for a social work degree remains in this rule as specific to this profession. Other requirements have been transferred to NEW RULE I.

24.219.504 LCSW, LMSW, AND LBSW SUPERVISED WORK EXPERIENCE REQUIREMENTS (1) ~~Applicants applying under ARM 24.219.501 for an LCSW license must meet the supervised work experience requirements in 37-22-301, MCA, and as defined in ARM 24.219.301.~~ LCSW supervised work experience hours obtained post-degree must include 3000 total hours. As a part of the total supervised work experience requirements, at least 100 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421.

(a) and (b) remain the same.

(2) ~~Applicants applying under ARM 24.219.501 for an LMSW or LBSW license must meet the supervised work experience requirements as described in ARM 24.219.301 and this rule.~~ LBSW applicants must complete a minimum of 500 total hours of supervised work experience over a period of no less than 18 months.

~~(a) Applicants must complete a minimum of 2000 total hours of supervised work experience over a period of no less than 18 months.~~

~~(b)~~ Of those ~~2000~~ 500 hours:

~~(i)~~ (a) at least ~~100~~ 50 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421; and

~~(ii)~~ (b) of the ~~100~~ 50 hours in ~~(i)~~ (a), at least ~~25~~ 10 hours must be with the client populations that will be served by the ~~LMSW or~~ LBSW candidate (see (5) for examples of client populations).

(3) LMSW applicants must complete a minimum of 1500 total hours of supervised work experience over a period of no less than 18 months. Of those 1500 hours:

(a) at least 75 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421; and

(b) of the 75 hours in (a), at least 25 hours must be with the client populations that will be served by the LMSW candidate (see (5) for examples of client populations).

~~(3)~~ (4) Supervisors must provide at least two hours of supervision for LCSW, LMSW, and LBSW candidates for every 160 hours of social work ~~as defined in 37-22-102, MCA~~.

~~(4) When an LCSW, LMSW, or LBSW candidate who applied under ARM 24.219.505 completes all the supervised work experience requirements in this rule, the candidate will qualify for the appropriate examination per ARM 24.219.502.~~

(5) and (6) remain the same.

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-22-301, 37-22-307, 37-22-308, 37-22-313,~~ [House Bill 137, Sections 9 and 10], MCA

REASON: The board is removing redundant wording and provisions. The board is also lowering the number of supervised hours necessary for LMSWs and LBSWs after hearing concerns from stakeholders about difficulty in obtaining the requisite number of hours to become licensed.

24.219.601 LCPC ~~LICENSE~~ EDUCATION REQUIREMENTS ~~– ORIGINAL APPLICANTS~~ ~~(1) Applicants for LCPC licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~

~~(2)~~ (1) Applicants for a Montana single-state professional counseling license must have a degree that is primarily counseling in nature from:

(a) remains the same.

(b) an accredited institution and a program that is at least 60 semester credits or 90 quarter credits and includes the CACREP core competencies, and CACREP professional practice standards for fieldwork and academic quality.

~~(3)~~ (2) In addition to the degree requirements in ~~(2)~~(1):

(a) and (b) remain the same.

~~(4) In addition to the degree requirements in (2) and (3), applicants must:~~

~~(a) have completed a supervised work experience that meets the requirements in 37-23-202, MCA, and ARM 24.219.604;~~

~~(b) have passed an examination as described in ARM 24.219.602 within four years of the date of the application;~~

~~(c) have completed a Federal Bureau of Investigation fingerprint background check per 37-23-202, MCA, within six months of the application date; and~~

~~(d) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

~~(5) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.~~

(3) Applicants for licensure through the Interstate Counseling Compact with Montana as home state must meet licensure requirements per [House Bill 777 (2023) Section 1].

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-23-202,~~ [HB 137 (2023) Section 11], MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. Standard application requirements have been transferred into NEW RULE I, and requirements specific to LCPCs have been retained in this rule. The board is incorporating licensure by the Interstate Counseling Compact into this rule as well.

24.219.604 LCPC SUPERVISED WORK EXPERIENCE REQUIREMENTS

~~(1) Applicants applying under ARM 24.219.601 must meet the supervised work experience requirements in 37-23-202, MCA, and as defined in ARM 24.219.301.~~

~~(a)~~ (1) Up to 1500 of the 3000 hours required in ~~37-23-202(1)(b), MCA~~ [House Bill 137 (2023) Section 11 (2)(b)], may be obtained pre-degree under the academic requirements of the degree program. In order to qualify as experience under this rule the hours must be approved by the graduate program.

(b) remains the same but is renumbered (2).

~~(2)~~ (3) For all of the 3000 supervised work experience hours required under ~~37-23-202, MCA~~ [House Bill 137 (2023) Section 11 (2)(b)], supervisors must provide at least one hour of face-to-face supervision and consultation for every 20 hours of professional counseling as defined in ~~37-23-102, MCA~~ [House Bill 137 (2023) Section 2 (11)].

AUTH: 37-1-131, ~~37-22-201,~~ [House Bill 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-23-202,~~ [House Bill 137 (2023) Sections 9 and 11], MCA

REASON: The board is removing redundant wording and provisions and updating statutory references.

24.219.701 LMFT EDUCATION ~~LICENSE~~ REQUIREMENTS ~~– ORIGINAL APPLICANTS~~ ~~(1) Applicants for LMFT licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~

~~(2)~~ (1) Applicants must have a degree that:

~~(a) meets the requirements in 37-37-201, MCA;~~

(b) and (c) remain the same but are renumbered (a) and (b).

~~(3) In addition to the requirements in (2), applicants must:~~

~~(a) have completed supervised work experience that meets the requirements in 37-37-201, MCA, and ARM 24.219.704;~~

~~(b) have passed an examination as described in ARM 24.219.702 within four years of the date of application;~~

~~(c) have completed a Federal Bureau of Investigation fingerprint background check per 37-37-201, MCA, within six months of the application date; and~~

~~(d) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

~~(4) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.~~

AUTH: 37-1-131, ~~37-22-201~~, [House Bill 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-37-201~~, [House Bill 137 (2023) Section 13], MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. Standard application requirements have been transferred into NEW RULE I, and requirements specific to LMFTs have been retained in this rule.

24.219.704 LMFT SUPERVISED WORK EXPERIENCE REQUIREMENTS

~~(1) Applicants applying under ARM 24.219.701 must meet the supervised work experience requirements in 37-37-201, MCA, and as defined in ARM 24.219.301.~~

~~(2)~~ (1) ~~As a part of the requirements in (1), the~~ Supervised work experience hours obtained post-degree must include:

(a) 100 individual hours, using a ~~5:1~~ 20:1 ratio of client contact hours to supervision hours of which at least 75 percent are in individual supervision;

(b) remains the same.

(c) a minimum of 1000 post-degree hours of client contact accumulated within the last five years with a minimum of 50 percent of those hours providing services to couples and families. There must be a ~~5:1~~ 20:1 ratio of client contact hours to supervision hours with:

(i) and (ii) remain the same.

(3) remains the same but is renumbered (2).

AUTH: 37-1-131, ~~37-22-201,~~ [House Bill 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-37-201,~~ [House Bill 137 (2023) Sections 9 and 13], MCA

REASON: The board is removing redundant wording and provisions and updating statutory references. The board is also reducing the ratio of hours practiced to supervision after discussion that the ratio for LMFTs was much higher than other professions and would be a barrier to licensure.

24.219.907 CBHPSS ~~LICENSE~~ REQUIREMENTS ~~– ORIGINAL~~ APPLICANTS ~~(1) Applicants for CBHPSS certification not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~

~~(2) Applicants must meet the following requirements:~~

~~(a) proof of completion of a training course with examination as described in ARM 24.219.912;~~

~~(b) have a supervisor that meets the requirements in ARM 24.219.421;~~

~~(c) attestation of having been diagnosed with and having received treatment for a behavioral health disorder as per 37-38-202, MCA;~~

~~(d) attestation to being in recovery per 37-38-202, MCA, and ARM 24.219.301;~~

~~(e) have completed a Federal Bureau of Investigation fingerprint background check per 37-38-202, MCA, within six months of the application date; and~~

~~(f) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

~~(3) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.~~

(1) CBHPSS must receive a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience. No more than 40 hours of work experience may transpire without receiving the required hours of supervision and/or consultation. Less frequent supervision may take place only with prior approval of the board.

AUTH: 37-1-131, ~~37-38-202,~~ [House Bill 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-38-202~~, [House Bill 137 (2023) Section 14], MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. Standard application requirements have been transferred into NEW RULE I, and requirements specific to CBHPSS have been retained in this rule.

24.219.912 CBHPSS TRAINING COURSE AND EXAMINATIONS

(1) remains the same.

AUTH: 37-1-131, ~~37-38-202,~~ [House Bill 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-38-202,~~ [House Bill 137 (2023) Section 14], MCA

General Reason Statement for ARM 24.219.1001 through 24.219.1038: House Bill 137 added LMFTs to the list of licensees who may perform psychological testing. The board is therefore amending its testing rules to include LMFTs and to update terminology to the more general "licensees" instead of listing the professions. The board is also removing unnecessary and duplicative rules that restate the standards of practice articulated elsewhere in rule or statute.

24.219.1001 GENERAL USE OF ASSESSMENT AND TESTING INSTRUMENTS (1) The primary purpose of educational and psychological assessment is to provide measures that are objective and interpretable in either comparative or absolute terms. ~~Counselors and social workers~~ Licensees shall interpret the statements in this rule as applying to the whole range of appraisal techniques, including test and nontest data.

(2) ~~Counselors and social workers~~ Licensees shall promote the welfare and best interests of the client in the development, publication, and utilization of educational and psychological assessment results and interpretations, and take reasonable steps to prevent others from misusing the information these techniques provide. They shall respect the clients' rights to know the results of the interpretations made and the basis for their conclusions and recommendations.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

24.219.1002 LICENSEES AUTHORIZED TO PERFORM PSYCHOLOGICAL ASSESSMENTS (1) Psychological assessments may be performed by the following individuals:

(a) ~~a licensed clinical professional counselor or licensed clinical social worker~~ an LCSW, LCPC, or LMFT who satisfies the requirements in ARM 24.219.1003(1), (3), (4), or (5);

(b) ~~a licensed clinical professional counselor or a licensed clinical social worker~~ an LCSW, LCPC, or LMFT who satisfies the requirements in ARM 24.219.1003(1) and who is acting under the supervision of another licensee of the board specified in (1)(a);

(c) remains the same.

(d) ~~a licensed clinical professional counselor or a licensed clinical social worker~~ an LCSW, LCPC, or LMFT who satisfies the requirements in ARM 24.219.1003(1) and who is acting under the supervision of a licensed psychologist.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

24.219.1003 EDUCATIONAL REQUIREMENTS FOR PERFORMING PSYCHOLOGICAL ASSESSMENTS WITHOUT SUPERVISION (1) Except as provided in (3), (4), and (5), ~~a licensed clinical professional counselor or licensed clinical social worker~~ an LCSW, LCPC, or LMFT may engage in psychological assessments without supervision only if the licensee has completed and can document to the board, if requested, the following information demonstrating generic and specific qualifications to perform psychological assessments:

(a) through (2) remain the same.

(3) A credentialing level designated and approved by statute for psychological assessments meets the requirements as set out in (1). ~~For example, 46-18-111, MCA, authorizes members of the Montana sex offender treatment association to perform psychosexual evaluations.~~

(4) A ~~licensed clinical professional counselor or licensed clinical social worker~~

licensee whose education was not from a regionally accredited program must obtain board approval before conducting psychological assessments. The licensee must demonstrate their education is substantially equivalent to the content set out in (1).

(5) A ~~licensed clinical professional counselor or licensed clinical social worker~~ licensee is qualified to perform psychological assessments and is not required to demonstrate that the licensee has met the qualifications set forth in (1) if the licensee performed psychological assessments prior to December 25, 2015.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

24.219.1005 COMPETENCE TO USE AND INTERPRET ASSESSMENT AND TESTING INSTRUMENTS (1) ~~Counselors and social workers~~ Licensees shall recognize the limits of their competence and perform only those testing and assessment services for which they have been trained. They shall be familiar with reliability, validity, related standardization, error of measurement, and proper application of any technique utilized.

(2) ~~Counselors and social workers~~ Licensees using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used, prior to using this type of computer application.

(3) ~~Counselors and social workers~~ Licensees shall take reasonable measures to ensure the proper use of psychological assessment techniques by persons under their supervision.

(4) ~~Counselors and social workers~~ Licensees are responsible for the appropriate selection, application, scoring, interpretation, and use of assessment instruments whether they score and interpret such tests themselves or use computerized or other services.

(5) ~~Counselors and social workers~~ Licensees responsible for decisions involving individuals or policies that are based on assessment results shall have a thorough understanding of educational and psychological measurement, including validation criteria, test research, and guidelines for test development and use.

(6) ~~Counselors and social workers~~ Licensees shall provide accurate information and shall not make false claims when making statements about assessment instruments or techniques.

(7) ~~Counselors and social workers~~ Licensees shall seek to identify and correct client misconceptions about assessment instruments or techniques and about the meaning of scores, charts, or graphs given to them as an assessment product. Special efforts shall be made to avoid unwarranted connotations of such terms as "IQ" and grade equivalent scores.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

24.219.1011 INFORMED CONSENT IN THE USE OF ASSESSMENT AND TESTING INSTRUMENTS (1) Prior to assessment, ~~counselors and social workers~~ licensees shall explain the nature and purposes of assessment and the specific use of results in language the client (or other legally authorized person on behalf of the

client) can understand, unless an explicit exception to this right has been agreed upon in advance. Regardless of whether scoring and interpretation are completed by ~~counselors and social workers~~ licensees, by assistants, or by computer or other outside services, ~~counselors and social workers~~ licensees shall take reasonable steps to ensure that appropriate explanations are given to the client.

(2) The examinee's welfare, explicit understanding, and prior agreement shall determine the recipients of test results. ~~Counselors and social workers~~ Licensees shall include accurate and appropriate interpretations with any release of individual or group test results.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

24.219.1201 ORIENTING GUIDELINES (1) through (3) remain the same.

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-22-102, 37-22-201, 37-23-102,~~ [HB 137 (2023) Section 3], MCA

24.219.1205 ROLE OF THE LICENSEE (1) remains the same.

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-22-102, 37-22-201, 37-23-102,~~ [HB 137 (2023) Section 3], MCA

24.219.1211 LIMITS OF CONFIDENTIALITY (1) through (8) remain the same.

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-22-102, 37-22-201, 37-23-102,~~ [HB 137 (2023) Section 3], MCA

24.219.1213 DISCLOSURE AND INFORMED CONSENT (1) and (2) remain the same.

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-22-102, 37-22-201, 37-23-102,~~ [HB 137 (2023) Section 3], MCA

24.219.1217 DOCUMENTATION (1) through (10) remain the same.

AUTH: 37-1-131, ~~37-22-201,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-22-102, 37-22-201, 37-23-102,~~ [HB 137 (2023) Section 3], MCA

24.219.2301 UNPROFESSIONAL CONDUCT AND CODE OF ETHICS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, CBHPSS, AND LCSW, LMSW, LBSW,

LCPC, LMFT, AND LAC CANDIDATES (1) ~~Any violation of this rule constitutes unprofessional conduct.~~ In addition to the provisions of 37-1-316, MCA, the following are unprofessional conduct.

(2) A licensee shall not:

(a) fail to respond to board inquiry or furnish information requested by the board, department investigators, or board representatives;

(a) and (b) remain the same but are renumbered (b) and (c).

~~(c) misrepresent or permit the misrepresentation of the licensee's professional qualifications, affiliations, or purposes;~~

~~(d) perform or hold the licensee out as able to perform professional services beyond the licensee's field or fields of competence as established by the licensee's education, training, and/or experience;~~

~~(e) misrepresent the type or status of license held by the licensee;~~

~~(f) fail to indicate licensure candidate status in professional communications and documentation;~~

~~(g) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading;~~

~~(h) commit fraud or misrepresent services performed;~~

(i) and (j) remain the same but are renumbered (d) and (e).

~~(k) provide professional services while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services;~~

~~(l) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age, or national origin;~~

(f) engage in conduct in the profession or occupation found to be a violation of the Montana Human Rights Act, Title 49, MCA;

(m) through (p) remain the same but are renumbered (g) through (j).

~~(q)~~ (k) violate federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by Title 50, chapter 32, MCA; ~~or~~

~~(r)~~ (l) be convicted of driving while under the influence of alcohol or drugs (DUI), or criminal possession of dangerous drugs at any time after issuance of a license, and within the two years preceding an application for licensure~~.~~;

(m) perform or supervise psychological assessments if not qualified to do so;

(n) perform or supervise parenting plan evaluations without specialized training, education, and experience in the areas of assessment of children and adults, child and family development, child and family psychopathology, and the impact of divorce on families; or

(o) practice independently as an LMSW or LBSW.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-139, 37-1-319, ~~37-22-201, 37-35-103,~~ [HB 137 (2023) Section 3], MCA

IMP: 37-1-131, 37-1-136, 37-1-139, 37-1-316, 37-1-319, ~~37-22-201, 37-35-103, 37-38-106,~~ [HB 137 (2023) Section 3], MCA

REASON: The board is repealing (2)(c) through (k) as duplicative of 37-1-316, MCA. The board is amending (2)(l) to account for the Montana Human Rights Act

as the sole remedy available for persons discriminated against, and is adding (2)(m) through (o) to address provisions elsewhere in rule that are proposed for repeal. The board is adding (2)(a) at the request of department staff for standardization amongst boards and to facilitate the prosecution of complaints.

24.219.5006 LAC ~~LICENSE REQUIREMENTS – ORIGINAL APPLICANTS~~ EDUCATION REQUIREMENTS ~~(1) Applicants for LAC licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~

~~(2)~~ (1) Applicants must ~~meet the following education requirements:~~

~~(a) have a degree or certificate that meets the requirements in 37-35-202, MCA; and~~

~~(b)~~ have completed ~~330~~ a minimum of 270 contact hours of training in addiction studies completed either in whole or in part of the degree or certificate in ~~(a)~~ [House Bill 137 (2023) Section 12]. If not all ~~330~~ 285 required hours were completed as part of the degree, then the applicant can complete those outside of the degree or certificate. The ~~330~~ 270 hours must be in the following areas:

~~(i)~~ (a) ~~minimum of~~ 60 hours in ~~chemical dependency~~ addiction assessment ~~and patient placement~~ (must include chemical dependency assessment, biopsychosocial testing, diagnosis, referrals, and patient placement);

~~(ii)~~ (b) ~~minimum of~~ 90 hours in addiction counseling;

~~(iii)~~ (c) ~~minimum of 30~~ 15 hours in pharmacology (must include drug classification, effects, detoxification, and withdrawal);

~~(iv)~~ (d) ~~minimum of 10~~ 15 hours in ethics for counselors;

~~(v)~~ (e) ~~minimum of~~ 30 hours in alcohol and drug studies;

~~(vi)~~ (f) ~~minimum of~~ 30 hours in addiction treatment planning and documentation;

~~(vii)~~ (g) ~~minimum of 20~~ 15 hours in multicultural competency ~~which includes~~ (knowledge of and sensitivity to the cultural factors and needs of diverse populations and demonstrates competency in applying culturally relevant skills);

~~(viii)~~ (h) ~~minimum of 30~~ 15 hours in co-occurring disorders; and

~~(ix)~~ (i) ~~minimum of 30~~ 15 hours in gambling/gaming disorder assessment and counseling.

~~(3) In addition to the requirements in (1) and (2), applicants must:~~

~~(a) have completed a supervised work experience that meets the requirements in ARM 24.219.5008;~~

~~(b) have passed an examination as described in ARM 24.219.5020 within four years of the date of the application;~~

~~(c) have completed a Federal Bureau of Investigation fingerprint background check per 37-35-202, MCA, within six months of the application date; and~~

~~(d) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

~~(4) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.~~

AUTH: 37-1-131, ~~37-35-103, 37-35-202,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-35-103, 37-35-202,~~ [HB 137 (2023) Section 12], MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. Standard application requirements have been transferred into NEW RULE I, and requirements specific to LACs have been retained in this rule.

The board is updating the hours of addiction specific education after requests from stakeholders and licensees that the requirement is unduly burdensome on licensees and applicants seeking licensure. After considerable discussion, the board is lowering the number of education hours and does not believe the lowered requirement will affect licensee competence or public safety, as the changes standardize the requirements with national licensing trends and are consistent with National Addiction Studies Accreditation Commission (NASAC) standards for addiction studies which are utilized by educational institutions.

24.219.5008 LAC SUPERVISED WORK EXPERIENCE REQUIREMENTS

(1) ~~Applicants applying under ARM 24.219.5006 must meet the supervised work experience requirement which includes:~~ Supervised work experience hours obtained post-degree or certification must include:

(a) and (b) remain the same.

(2) As part of the required hours in (1) at least 500 hours must be in the following skill areas ~~under face-to-face supervision by the supervisor~~:

(a) through (3) remain the same.

(4) ~~When an LAC candidate completes the requirements of (1) and (2) of this rule, the candidate will qualify for the examination per ARM 24.219.5020.~~ Supervision must occur in a 20:1 ratio of client contact hours to supervision, and must include group supervision, individual supervision, and 10 hours of direct observation.

AUTH: 37-1-131, ~~37-35-103, 37-35-202,~~ [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-35-103, 37-35-202,~~ [HB 137 (2023) Section 12], MCA

REASON: The board is removing redundant wording and provisions and updating statutory references. The board is adding the ratio in (4) to be consistent with the other supervision requirements under this board.

24.219.5010 QUALIFIED TREATMENT PROGRAM (1) remains the same.

(2) Qualified treatment programs for supervised work experience are:

(a) and (b) remain the same.

(c) Indian Health Service (IHS)-approved settings or IHS, Tribal and Urban (ITU) settings;

(d) through (4) remain the same.

AUTH: 37-1-131, ~~37-35-103, 37-35-202~~, [HB 137 (2023) Section 3], MCA
IMP: 37-1-131, ~~37-35-103, 37-35-202~~, [HB 137 (2023) Section 12], MCA

REASON: The board is including ITU as that term is commonly used in addiction counseling.

4. The proposed new rules are as follows:

NEW RULE I APPLICATION FOR LICENSURE (1) Each application for licensure from the board must include:

(a) a completed application form;

(b) the initial license fee;

(c) verification of applicable educational, examination, and experience requirements; and

(d) a Federal Bureau of Investigation fingerprint background check within six months of the application date.

(2) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.

(3) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.

(4) LCSW, LMSW, LCPC, or LMFT applicants holding a current, active license in good standing in another state or jurisdiction with an education requirement that is not substantially equivalent to Montana's requirement must have a master's degree in the profession the applicant is applying to from an accredited institution with a minimum of 48 semester or 72 quarter credits and have completed five years of post-degree experience in the profession, in addition to the supervised work experience.

(5) Degree programs in the candidate stage of accreditation are accredited for purposes of a qualifying degree.

(6) LBSW and LMSW who qualify for licensure pursuant to [HB 499/HB 137 Section 10] must provide evidence of social work experience:

(a) attested to by a licensed social worker or a direct supervisor from a former or current employer who is familiar with the applicant's work experience; and

(b) within the period between January 1, 2018 and January 1, 2023.

AUTH: 37-1-131, [House Bill 137 (2023), Section 3], MCA
IMP: 37-1-131, [House Bill 137 (2023), Section 5], [House Bill 137 (2023), Section 9], [House Bill 137 (2023), Section 10], [House Bill 137 (2023), Section 11], [House Bill 137 (2023), Section 12], [House Bill 137 (2023), Section 13], [House Bill 137 (2023), Section 14], MCA

REASON: The board is combining all application rules into a single rule for standardization purposes.

NEW RULE II EXAMINATIONS (1) The following examinations are approved for licensure.

(a) LCSW: Association of Social Work Boards (ASWB) clinical examination;

(b) LMSW: ASWB master's examination;

(c) LBSW: ASWB bachelor's examination;

(d) LCPC:

(i) National Board for Certified Counselors (NBCC) National Counselor examination (NCE); or

(ii) NBCC National Clinical Mental Health Counseling examination (NCMHCE);

(e) LMFT: the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) examination in marriage and family therapy;

(f) LAC:

(i) Level 1 or Level 2 National Certification Commission for Addiction Professionals (NCC AP);

(ii) Northwest Certification II or III;

(iii) Southwest Certification II; or

(iv) International Certification and Reciprocity Consortium (IC&RC) Alcohol and Drug Counselor (ADC) examination or Advanced Alcohol and Drug Counselor (AADC) examination.

(2) Individuals who have not already passed an approved examination can be approved by department staff to register for one of the approved examinations:

(a) upon submission of a complete application; or

(b) once a candidate license is issued and the licensee requests to be approved to take the exam.

(3) Applicants or candidates may not take an examination more than three times unless approved to retake the examination. Applicants or candidates requesting to retake the examination must submit a request including but not limited to a specific study plan.

AUTH: 37-1-131, [House Bill 137 (2023), Section 3], MCA
IMP: 37-1-131, [House Bill 137 (2023), Section 5], [House Bill 137 (2023), Section 9], [House Bill 137 (2023), Section 10], [House Bill 137 (2023), Section 11], [House Bill 137 (2023), Section 12], [House Bill 137 (2023), Section 13], MCA

REASON: The board is combining all examination requirements into a single rule for standardization purposes. In addition, the board is adding the Northwest Certification III as an acceptable examination for LACs, as the examination has been approved by the board but not previously added to the rule.

NEW RULE III ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

5. The rules proposed to be repealed are as follows:

24.219.415 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023 at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.219.423 CHANGE OF SUPERVISOR

AUTH: 37-1-131, 37-22-201, 37-35-103, 37-35-202, MCA
IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, 37-23-202, 37-35-103, 37-35-202, 37-37-201, 37-38-202, MCA

REASON: The board is combining ARM 24.219.422 and 24.219.423 for easier understanding by applicants, supervisors, and the general public. The board is further updating department duties by indicating the department may request records.

24.219.502 EXAMINATION – LCSW, LMSW, and LBSW

AUTH: 37-1-131, 37-22-201, 37-22-307, 37-22-308, MCA
IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, MCA

REASON: The board is combining all examination requirements into a single rule for standardization purposes. The requirements for this rule have been transferred to NEW RULE II.

24.219.505 LCSW, LMSW, AND LBSW CANDIDATE LICENSE REQUIREMENTS

AUTH: 37-1-131, 37-22-201, 37-22-307, 37-22-308, MCA
IMP: 37-1-131, 37-22-307, 37-22-308, 37-22-313, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. Requirements from this rule have been transferred to NEW RULE I. Requirements that duplicate statute have been repealed.

24.219.508 INDEPENDENT PRACTICE – LCSW, LMSW, AND LBSW

AUTH: 37-1-131, 37-22-201, 37-22-301, 37-22-307, 37-22-308, MCA
IMP: 37-1-131, 37-22-201, 37-22-301, 37-22-307, 37-22-308, MCA

REASON: The board is moving the prohibition on LBSW and LMSW to practice independently to ARM 24.219.2301.

24.219.512 LCSW, LMSW, AND LBSW LICENSE REQUIREMENTS – OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-1-304, 37-22-301, 37-22-307, 37-22-308, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. Requirements from this rule have been transferred to NEW RULE I.

24.219.602 EXAMINATION – LCPC

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-202, MCA

REASON: The board is combining all examination requirements into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE II.

24.219.605 LCPC CANDIDATE LICENSE REQUIREMENTS

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-213, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE I.

24.219.608 ADDITIONAL EDUCATION REPORTING – LCPC

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-202, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE I.

24.219.612 LCPC LICENSE REQUIREMENTS – OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-1-304, 37-23-202, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE I.

24.219.702 EXAMINATION – LMFT

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-201, MCA

REASON: The board is combining all examination rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE II.

24.219.705 LMFT CANDIDATE LICENSE REQUIREMENTS

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-205, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE I.

24.219.706 MARRIAGE AND FAMILY THERAPIST LICENSURE CANDIDATE REQUIREMENTS

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-205, MCA

REASON: The board is repealing this rule as duplicative of ARM 24.219.422.

24.219.712 LMFT LICENSES – OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-1-304, 37-37-201, MCA

REASON: The board is combining application rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE I.

24.219.923 CBHPSS CERTIFICATION REQUIREMENTS – OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, 37-38-202, MCA
IMP: 37-1-131, 37-1-304, 37-38-202, MCA

REASON: The board is combining all application rules into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE I.

24.219.1004 LICENSEES QUALIFIED TO SUPERVISE PSYCHOLOGICAL ASSESSMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as unnecessary duplication of ARM 24.219.1002.

24.219.1014 RELEASE OF INFORMATION TO COMPETENT PROFESSIONALS OF ASSESSMENT AND TESTING INSTRUMENT RESULTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1017 PROPER DIAGNOSIS OF MENTAL DISORDERS WITH THE USE OF ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1020 TEST SELECTION IN THE USE AND INTERPRETATION OF ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates basic standards of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1023 CONDITIONS OF TEST ADMINISTRATION WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates basic standards of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1026 DIVERSITY WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1029 TEST SCORING AND INTERPRETATION WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates basic standards of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1032 TEST SECURITY WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1035 OBSOLETE TESTS AND OUTDATED TEST RESULTS WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1038 TEST CONSTRUCTION FOR ASSESSMENT AND TESTING INSTRUMENTS

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing psychological assessments.

24.219.1209 COMPETENCY

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

REASON: The board is repealing this rule as it restates a basic standard of practice applicable to all licensees of the board, not just those performing parenting plan evaluations.

24.219.1215 COLLECTION AND USE OF DATA

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

REASON: The board is repealing this rule as it restates basic standards of practice applicable to all licensees of the board, not just those performing parenting plan evaluations.

24.219.2404 SCREENING PANEL

AUTH: 37-22-201, MCA
IMP: 37-1-307, MCA

REASON: The makeup of the board's screening panel and the chair's authority to appointment members is unnecessary to have in rule.

24.219.5005 GAMBLING DISORDER EDUCATION REQUIREMENT FOR CURRENT LAC LICENSEES

AUTH: 37-1-131, 37-35-103, MCA
IMP: 37-1-321, 37-35-103, MCA

REASON: The board is repealing this rule as unnecessary. When the rule was adopted in 2016, gambling education was a new requirement for existing licensees at that time. Existing licensees had until August of 2017 to receive the necessary education or risk their licenses being suspended. The board believes the need for the rule has passed, and is therefore repealing the rule.

24.219.5007 LAC LICENSE REQUIREMENTS – OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, 37-35-103, 37-35-202, MCA
IMP: 37-1-131, 37-1-304, 37-35-103, 37-35-202, MCA

REASON: The board is moving all application rules into a single, streamlined rule for ease of application. The requirements contained in this rule have been transferred to NEW RULE I.

24.219.5013 LAC CANDIDATE LICENSE REQUIREMENTS

AUTH: 37-1-131, 37-35-103, 37-35-202, MCA
IMP: 37-1-131, 37-35-103, 37-35-202, MCA

REASON: The board is moving all application rules into a single rule for standardization purposes. Requirements from this rule have been transferred to NEW RULE I.

24.219.5020 EXAMINATION – LAC

AUTH: 37-1-131, 37-35-103, 37-35-202, MCA
IMP: 37-1-131, 37-35-103, 37-35-202, MCA

REASON: The board is moving all examination requirements into a single rule for standardization purposes. The requirements from this rule have been transferred to NEW RULE II.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 1, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 4, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
LAURA DEVER, CHAIR

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE BOARD OF PHARMACY
AND THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.174.401, 24.174.2301, 24.225.301, 24.225.401, and 24.225.550 and the adoption of NEW RULES I through IV pertaining to veterinary retail dispensing	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 28, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/85705820322
Meeting ID: 857 0582 0322, Passcode: 499885
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 857 0582 0322, Passcode: 499885

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 21, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASON: The 2023 Montana Legislature passed Senate Bill 561, requiring licensing of veterinary retail facilities and veterinary dispensing technicians. The Board of Pharmacy and the Board of Veterinary Medicine are proposing to amend certain rules and adopt new rules to implement the provisions of the bill by setting fees and application requirements and establishing scopes of practice and unprofessional conduct applicable to these new license types. Where necessary, more specific reasons are given following the individual rule.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

BOARD OF PHARMACY

24.174.401 FEE SCHEDULE
(1) through (27) remain the same.

(28) Veterinary retail facility initial license and annual renewal fee 150

(28) remains the same but is renumbered (29).

AUTH: 37-1-134, 37-2-104, 37-7-201, 37-7-604, 37-18-803, 50-32-314, MCA
IMP: 37-1-134, 37-2-104, 37-7-201, 37-7-306, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 37-18-803, 50-32-314, MCA

REASON: It is reasonably necessary to set a fee to cover the costs of initial licensure and renewal of veterinary retail facilities. The board estimates that approximately 25 facilities will be initially impacted by this new fee, resulting in $3,750 in additional annual revenue.

24.174.2301 UNPROFESSIONAL CONDUCT

(1) through (1)(t) remain the same.

(u) failure to comply with an agreement the licensee has entered into with the impaired pharmacist program. ; and

(v) failure to follow policies or procedures defined in the practice situation to safeguard patient care.

AUTH: 37-1-319, 37-7-201, MCA
IMP: 37-1-316, MCA

REASON: The board is adding (1)(v) as requested by department prosecutors to facilitate cases and reduce the necessity for expert witnesses. Pharmacies are required to utilize and maintain procedure manuals for the pharmacies' operations. It is reasonable to clarify that failure to follow the procedures is unprofessional conduct and subject to discipline.

BOARD OF PHARMACY
PAUL BRAND, PHARMACIST, PRESIDENT

BOARD OF VETERINARY MEDICINE

24.225.301 DEFINITIONS

(1) through (12) remain the same.

~~(13) "Veterinary prescription drugs" means those drugs restricted by federal law to use by or on the order of a licensed veterinarian (section 503(f) Food, Drug and Cosmetic Act). The law requires that such drugs be labeled with the statement: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."~~

AUTH: 37-18-202, 37-18-603, 37-18-701, MCA
IMP: 37-18-102, 37-18-104, 37-18-603, 37-18-701, MCA

REASON: Section 1 of Senate Bill 561 (37-18-801, MCA) defines "veterinary prescription drugs," and it is unnecessary to repeat the definition in rule.

24.225.401 FEE SCHEDULE

(1) through (4) remain the same.

(5) Veterinary dispensing technician

(a) application	35
(b) renewal	35

(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 37-1-134, 37-18-202, 37-18-603, 37-18-701, 37-18-806, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-18-302, 37-18-603, 37-18-701, 37-18-806, MCA

REASON: It is reasonably necessary to set a fee for initial licensure and renewal of veterinary dispensing technicians. The board estimates that approximately 35 individuals will be initially impacted by this new fee, resulting in $1,225 in additional annual revenue.

24.225.550 UNPROFESSIONAL CONDUCT

(1) through (3) remain the same.

(4) In addition to 37-18-804, MCA, it is unprofessional conduct for a veterinary dispensing technician to:

(a) dispense a product without consulting with the prescribing veterinarian regarding questions and/or other needs for clarification;

(b) alter prescriptions or other records which the law requires; and

(c) dispense an outdated or damaged product.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-18-202, MCA
IMP: 37-1-131, 37-1-136, 37-1-316, 37-1-319, 37-18-309, MCA

REASON: It is reasonably necessary to amend the unprofessional conduct rule to include standards of practice for registered veterinary dispensing technicians.

5. The proposed new rules are as follows:

NEW RULE I VETERINARY DISPENSING TECHNICIAN REGISTRATION

(1) Applicants for registration must:

(a) submit a completed application form;

(b) pay the required fee;

(c) provide the name and license number of the veterinary retail facility where the technician is working; and

(d) review and attest to understanding the board's educational materials.

(2) A person licensed as an LVT does not require a separate license to work as a dispensing technician but must provide the board with the name and license number of the veterinary retail facility where the LVT is employed and attest to review of the board's educational materials.

AUTH: 37-18-806, MCA

IMP: 37-18-805, 37-18-806, MCA

NEW RULE II VETERINARY RETAIL FACILITY LICENSE REQUIREMENTS

(1) Applicants for licensure as a veterinary retail facility must:

(a) submit a completed application form;

(b) pay the required application fee or renewal fee;

(c) designate a registered veterinary dispensing technician as person-in-charge; and

(d) comply with the provisions of 37-18-803, MCA.

(2) Veterinary retail facilities must notify the board within 30 days of the following changes:

(a) designated person-in-charge; and

(b) termination in service.

AUTH: 37-18-803, MCA
IMP: 37-18-803, MCA

NEW RULE III VETERINARY RETAIL FACILITY REQUIREMENTS (1) A veterinary retail facility may dispense veterinary prescription drugs as defined in 37-18-801, MCA, upon receipt of a Montana licensed veterinarian's prescription, standing order, or other order for use in livestock. Drugs must be dispensed by a veterinary dispensing technician registered with the Board of Veterinary Medicine.

(2) A veterinary retail facility may refill a prescription only if the initial prescription authorizes a specific number of refills, or as identified in a standing order or other appropriate authorization from the prescribing veterinarian.

(3) All licensed veterinary retail facilities shall:

(a) for two years, maintain readily accessible written or electronic records of veterinary prescription drug inventory and prescriptions received, and make the records available for board inspection;

(b) provide for secure storage of and accurate recordkeeping for veterinary prescription medications, records, and drug inventory;

(c) limit access to veterinary prescription medications and records to the facility's person-in-charge and registered veterinary dispensing technician(s) only;

(d) store veterinary prescription drugs separately from over-the-counter drugs and as recommended by the manufacturer;

(e) operate in a sanitary manner;

(f) purchase veterinary prescriptions drugs, as defined in 37-18-801, MCA, from a wholesale distributor or pharmacy licensed by the board;

(g) maintain policies and procedures to manage and dispose of outdated, expired, damaged, or returned drugs to prevent such drugs from being dispensed, distributed, or resold. Facilities may utilize a reverse distributor licensed as a wholesale distributor by the board; and

(h) create and maintain a dispensing record and a client information sheet that includes the following:

(i) name, address, and telephone number of the Montana licensed prescribing veterinarian;

(ii) client name;

(iii) identification of animals or herds treated;
(iv) date(s) each prescription was written, and the drugs dispensed;
(v) name and quantity of dispensed drug;
(vi) directions for the drug's dosage, frequency, and duration for use;
(vii) manufacturer's cautionary statements; and
(viii) manufacturer's expiration date.

(4) If the information in (3)(h) is included on the manufacturer's label, it is unnecessary to repeat the same information on the client's information sheet, but it must be included in the dispensing record.

AUTH: 37-18-803, MCA
IMP: 37-18-803, 37-18-804, MCA

NEW RULE IV VETERINARY DISPENSING TECHNICIAN SCOPE OF PRACTICE (1) A veterinary dispensing technician, working in a veterinary retail facility licensed by the Board of Pharmacy, must:

(a) create a written or electronic client record;

(b) dispense veterinary prescription drugs upon receipt of a prescription order, standing order, or other order as authorized by a licensed veterinarian;

(c) consult with the prescribing veterinarian in order to clarify a prescription and/or other relevant information necessary to dispense the veterinary prescription drug;

(d) dispense veterinary prescription drugs based on package size and quantity as provided by the manufacturer;

(e) perform inventory control to remove expired or damaged drugs from stock, prevent returned drugs from being returned to stock, and ensure such drugs are not dispensed, distributed, or resold;

(f) ensure the drug product and client information sheet match the prescription order and the information on the manufacturer's labeling with respect to drug, dosage form, strength, and quantity; and

(g) comply with prescription labeling, recordkeeping, storage, security, and inventory control required of veterinary retail facilities, per [NEW RULE III].

AUTH: 37-1-131, MCA
IMP: 37-1-131, MCA

BOARD OF VETERINARY MEDICINE
TIA NELSON, DVM, PRESIDENT

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 1, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 23, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.351.101, 24.351.211, 24.351.215, 24.351.227, 24.351.411, and 24.351.1117, the adoption of NEW RULES I and II, and the repeal of ARM 24.351.201, 24.351.203, 24.351.204, 24.351.207, 24.351.301, 24.351.321, 24.351.401, 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, and 24.351.1115 pertaining to the building and commercial measurements bureau	)))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 28, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89380567892
Meeting ID: 893 8056 7892, Passcode: 700158
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 893 8056 7892, Passcode: 700158

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 21, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.351.101 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Bureau" means the ~~weights and measures~~ Building and Commercial Measurements Bureau of the Montana Department of Labor and Industry.

~~(2) "Commercial weighing or measuring device" means:~~

~~(a) any weight, measure, weighing or measuring device commercially used to establish:~~

~~(i) the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption that are offered or sold; or~~

~~(ii) any basic charge of payment for services rendered on the basis of weight or measure; and~~

~~(b) any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.~~

(3) remains the same but is renumbered (2).

~~(4) "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device, and that voluntarily registers itself as such with the bureau.~~

~~(5) "Registered serviceperson" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device, and who voluntarily applies for registration with the bureau.~~

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: This rule is amended to delete the definitions contained in the NIST Handbooks 44, 130, and 133, adopted by reference in NEW RULE I.

24.351.211 FEES FOR TESTING AND CERTIFICATION (1) The following fees shall apply to the testing of all devices subject to these rules:

(a) PA Meters	(20 GPM or less)	$10.00
(b) PB Meters	(20 GPM-130 GPM)	$30.00
(c) PC Meters	(above 130 GPM)	$30.00
(d) PD Meters	(Liquified Petroleum Gas)	$50.00
(e) SA/S1 Scales	(499 LB or less)	$20.00
(f) SB/S2 Scales	(500 LB-1,999 LB)	$30.00
(g) SC/S3 Scales	(2,000 LB-7,999 LB)	$35.00
(h) SD/S4 Scales	(8,000 LB-60,000 LB)	$150.00
(i) SE/S5 Scales	(60,000 LB or more)	$150.00

(2) A reinspection of a rejected device shall not incur the testing and certification fee.

~~(1)~~(3) Special inspections ~~fees~~ are not required by statute and only occur upon request to the bureau. The fees for special inspections are as follows:

(a) through (c) remain the same.

~~(2)~~(4) Where fees are not paid within 30 days after ~~the special~~ any inspection completed by the bureau, the bureau may seal and remove ~~from service~~ the device ~~in question~~ from service, until ~~such~~ the fees have been paid. ~~The bureau will coordinate the special inspections, whenever possible, with other inspection activities in an effort to keep charges as reasonable as possible.~~

AUTH: 30-12-202, MCA
IMP: 30-12-202, 30-12-203, MCA

REASON: This rule is amended to establish a fee-for-services model where fees only accrue if testing occurs, rather than raise fees on all devices subject to testing. The bureau estimates that this fee change will affect 4,355 current licensees that operate 28,203 devices that require testing. The bureau estimates that the annual fees collected by the bureau will increase by $668,968, which represents the increase in fees collected if the bureau completes 80% of annual inspections. The amendments also clarify the difference between a required inspection and a special inspection. Finally, the amendments clarify that failure to pay the bureau for any inspection may result in the bureau sealing a device and removing it from service.

24.351.215 LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES (1) Measuring device license fees are as follows:

(a) each ~~gasoline meter, diesel meter, compressed natural gas dispenser or fuel oil meter~~ volume measuring device with a listed maximum delivery rate of 20 or less gallons per minute (gpm) $21

(b) each ~~petroleum vehicle tank meter or stationary petroleum meter~~ volume measuring device with a maximum listed delivery rate of between 130 gpm and 20 gpm 70

(c) each ~~petroleum vehicle tank meter or stationary petroleum meter~~ volume measuring device with a maximum listed delivery of over 130 gpm 83

(d) and (2) remain the same.

AUTH: 30-12-202, 82-15-102, 82-15-105, MCA
IMP: 30-12-203, 82-15-105, MCA

REASON: The rule is amended because fuel is not the only material used in commerce that is measured by volume in this state. Title 30, chapter 12, parts 1 through 5, MCA.

24.351.227 SCALE PIT CLEARANCE (1) remains the same.

(2) Scale pits are not required for fully electronic scales, unless the pit is necessary for the installation, operation, or maintenance of the ~~particular~~ fully electronic scale.

(3) Electronic scales which do not require a pit for their installation, operation, or maintenance must be installed in strict compliance with the manufacturer's specification for each specific model ~~and with the requirements of NIST Handbook 44, 2012 edition~~.

(4) remains the same.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: This rule is amended to clarify language. The amendment also removes the reference to the 2012 NIST Handbook, which is also duplicative because the NIST Handbook includes manufacturer's specifications.

24.351.411 SAMPLING OF PETROLEUM PRODUCTS (1) remains the same.

(2) On complaint of an individual as to standards of a petroleum product, sampling will be made by employees of the bureau. ~~An~~ The bureau shall review the complaint and the sampling to determine if an investigation will be conducted ~~by the bureau to determine if a test is required for~~ into the petroleum product in question.

AUTH: 82-15-102, MCA
IMP: 82-15-107, MCA

REASON: This rule is amended to allow the department discretion to determine if an investigation is required based on the complaint and sampling.

24.351.1117 REGISTRATION BY RECIPROCITY (1) ~~The bureau may enter into a reciprocal agreement with any other state(s) that has similar voluntary registration policies. Under such an agreement, a registered serviceperson and a registered service agency from any state that is party to the reciprocal agreement is granted full reciprocal authority, including reciprocal recognition of standards and testing equipment, in all states that are a party to such an agreement.~~ The bureau may approve an individual registered serviceperson from any state if the bureau determines that the individual's state of registration's registered service agency's requirements are substantially similar to those used in this state, and the individual meets those requirements. The individual shall provide the bureau with any information necessary for the bureau to make this determination.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: This rule is amended to allow the department to assess the registration status of individual servicepersons from another state on a case-by-case basis. Registered servicepersons from another state can become registered in Montana based on their individual credentials rather than their original state of registration.

4. The proposed new rules are as follows:

NEW RULE I ADOPTION OF STATE WEIGHTS AND MEASURES STANDARDS AND RECOMMENDATIONS (1) Subject to the provisions of Title 32, chapter 12, part 2, and Title 82, chapter 15, part 1, MCA, the bureau adopts and incorporates by reference the following publications for weights and measures in Montana:

(a) NIST Handbook 44, 2023 edition: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices with the following modifications:

(i) Delete paragraph UR.3.3. Single-Draft Weighing found in section 2.20, Scales.

(ii) Delete paragraph UR.2.2. Ticket Printer, Customer Ticket found in section 3.31, Vehicle-Tank Meters.

(b) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality with the following modifications:

(i) IV Uniform Regulations part A, Uniform Packaging and Labeling Regulation section 14, insert in the blank space [effective date], for the effective date.

(ii) IV Uniform Regulations part B, Uniform Regulation for the Method of Sale of Commodities, section 5 insert in the blank space [effective date], for the effective date.

(iii) IV Uniform Regulations part D, Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, section 3, Registration Fee, insert in all blank spaces, $25.00. Section 8 insert P.O. Box 200516 Helena Mt 59620 in the blank space.

(iv) IV Uniform Regulations part E. Uniform Regulation for National Type Evaluation, section 4(c) through (g) insert in all blank spaces January 1, 2024 for the effective date.

(v) IV Uniform Regulations part E. Uniform Regulation for National Type Evaluation, section 7, insert in the blank space [effective date], for the effective date.

(c) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality with the following modifications:

(i) Delete in its entirety Section III, part B Uniform Weighmaster Law.

(ii) Delete in its entirety Section IV, part C Uniform Unit Pricing Regulation.

(d) NIST Handbook 133, 2022 edition: Checking the Net Contents of Packaged Goods.

(2) A copy of NIST Handbooks 44, 130, and 133 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference on Weights and Measures, Gaithersburg, MD 20899-0001, or online at www.nist.org.

AUTH: 30-12-202, 82-15-102, MCA
IMP: 30-12-202, 30-12-205, 30-12-401, 30-12-406, 30-12-407, 30-12-408, 30-12-409, MCA

REASON: NEW RULE I condenses the department's adoptions and modifications of NIST Handbooks 44, 130, and 133, into one rule.

NEW RULE II VOLUNTARY REGISTRATION PROGRAM FOR SERVICEPERSONS AND SERVICE AGENCIES - FEES (1) The bureau adopts and incorporates by reference the Uniform Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices in NIST Handbook 130, 2023 edition, for the voluntary registration of individuals and entities that have demonstrated an ability to accurately install, service, repair, or recondition a commercial weighing or measuring device.

(2) The individual or entity shall apply for registration on application forms provided by the bureau.

(3) The application and annual renewal fees are as follows:

(a) serviceperson	$25
(b) service agency	25
(c) late renewal fee	12.50

(4) The bureau shall maintain and make public a list of registered servicepersons and registered service agencies.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: NEW RULE II adopts by reference the Uniform Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices in NIST Handbook 130, 2023 edition, condensing the department's voluntary registration program for servicepersons and service agencies into one rule. The fee amounts in NEW RULE II remain the same.

5. The rules proposed to be repealed are as follows:

24.351.201 NIST HANDBOOK 44 - SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES

AUTH: 30-12-202, MCA
IMP: 30-12-202, 30-12-205, 30-12-401, 30-12-406, 30-12-407, 30-12-408, 30-12-409, MCA

REASON: ARM 24.351.201, 24.351.301, 24.351.321, 24.351.401 are repealed and replaced by NEW RULE I.

24.351.203 CERTIFICATION OF STATIONARY STANDARDS

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: This rule is repealed because all field standards used by the department for testing and certifying weighing and measuring devices must be certified annually under 30-12-104, MCA. The statute does not require testing and certification of privately owned weights used to self-evaluate accuracy for hopper or other similar scales.

24.351.204 UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: ARM 24.351.204 is repealed because it is duplicative of the NIST Handbook 130, adopted by reference in NEW RULE I. NEW RULE I condenses the department's adoptions and modifications of NIST Handbooks 44, 130, and 133, into one rule.

24.351.207 SPLIT WEIGHING ALLOWED

AUTH: 30-12-107, MCA
IMP: 30-12-107, 37-12-306, 37-12-406, MCA

REASON: This rule is repealed because it is duplicative of 30-12-107, MCA.

24.351.301 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

24.351.321 NIST HANDBOOK 133 – CHECKING THE NET CONTENTS OF PACKAGED GOODS

AUTH: 30-12-202, 30-12-207, 30-12-301, 30-12-302, MCA
IMP: 30-12-202, 30-12-207, 30-12-301, 30-12-302, MCA

24.351.401 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS

AUTH: 82-15-102, 82-15-103, MCA
IMP: 82-15-103, MCA

24.351.1101 VOLUNTARY REGISTRATION PROGRAM FOR SERVICEPERSONS AND SERVICE AGENCIES

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: ARM 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, and 24.351.1115 are repealed and replaced by NEW RULE II. NEW RULE II condenses the department's voluntary registration program for servicepersons and service agencies into one rule.

24.351.1104 INDIVIDUAL APPLICANTS FOR REGISTRATION

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

24.351.1107 AGENCY APPLICANTS FOR REGISTRATION

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

24.351.1111 PRIVILEGES AND OBLIGATIONS OF A CERTIFICATE HOLDER

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

24.351.1115 RENEWAL OF CERTIFICATE OF REGISTRATION

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 1, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 27, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.25.701, 36.25.702, 36.25.705, 36.25.706, and 36.25.707 pertaining to state land leasing	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 6, 2023, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Montana Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting: https://mt-gov.zoom.us/j/89662056237?pwd=TlQyc05tZXFkYzlYUTk5M2s5dlMxZz09; Meeting ID: 896 6205 6237, Password: 870481; or

b. Dial by Telephone: +1 646 558 8656; Meeting ID: 896 6205 6237, Password: 870481; Find your local number: https://mt-gov.zoom.us/u/kdmQ1jS6Kg

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the department no later than 5:00 p.m. on November 24, 2023, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail DNRCOAH@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.25.701 DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

(1) through (6) remain the same.

(7) "Improvement owner" means a person with legal title to the improvements built upon or located on the cabin or home site, who is a current or former lessee, or their successor.

(7) through (11) remain the same but are renumbered (8) through (12).

AUTH: 77-1-204, 77-2-308, 77-2-328, 77-2-362, MCA
IMP: 77-2-328, 77-2-362, 77-2-363, MCA

REASON: The intent of the cabin and home site sales program, when enacted by SB 369 in the 2013 legislative session, was to provide a way for current and former lessees, including those who owned improvements on cabin or home sites with canceled leases, to have the opportunity to participate in the cabin and home site sales program. The addition of a definition for "improvement owner" helps to clarify the intent that those current or former lessees with the legal title to the improvements on lease lots are those owners that can nominate the lots for sale.

36.25.702 TRANSACTION COSTS FOR CABIN SITE OR HOME SITE SALES (1) and (2) remain the same.

(3) Except as provided ~~hereinabove~~ in (1) and (2), processing costs as described in ARM 36.25.701~~(9)~~(11), shall be paid by the nominator or the purchaser, respectively.

AUTH: 77-2-362, MCA
IMP: 77-2-362, MCA

REASON: The proposed amendment is necessary to correct an inaccurate reference to ARM 36.25.701(9). The correct reference is ARM 36.25.701(11).

36.25.705 PROCEDURES FOR NOMINATING AND EVALUATING CABIN SITES AND HOME SITES FOR SALE PURSUANT TO LAND BANKING (1) and (2) remain the same.

(3) The board, the department, the current lessee of, or the improvement owner ~~of the improvements resting upon a cabin site or home site,~~ may nominate that cabin site or home site for sale:

(a) through (e) remain the same.

(4) Sale of cabin sites and home sites are exempt from Montana Environmental Policy Act (MEPA) review under 77-2-363~~(6)(b)~~(7), MCA.

(5) through (13) remain the same.

(14) If the board has preliminarily approved a proposed sale, the department shall contract with a Montana-licensed certified general appraiser to appraise the cabin site or home site, including improvements under consideration for sale in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP)~~,~~ ~~as adopted by reference by the state Board of Real Estate Appraisers in ARM 24.207.402~~. The department will review or contract the review of the appraisal conducted by the contract appraiser.

(15) remains the same.

(16) The department shall give the lessee or improvement owner notice and opportunity for an informal administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing to make a recommendation of the values of the land and the cabin site or home site improvements to the board.

(a) The lessee or improvement~~s~~ owner must file notice of appeal of value with the department within ten days of the department's notification to the lessee or improvement~~s~~ owner of the department's initial valuation of the land and the improvements. Within ten days after receipt of any notice of appeal the department

shall notify the lessee or improvements owner of the time and place of the hearing before the director of the department, or the director's designee. Any such hearing shall be informal without adherence to strict rules of evidence as provided in 2-4-604, MCA. A hearings examiner may be appointed to conduct the hearing. The lessee or owner of improvements owner shall present evidence and arguments it wishes the department to consider in recommending values of land and improvements to the board.

(17) through (22) remain the same.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-362, 77-2-363, 77-2-364, 77-2-366, MCA

REASON: The proposed amendment is necessary to correct an inaccurate reference to 77-2-363(6)(b). The correct reference is 77-2-363(7), MCA. Reference to ARM 24.207.402 is being removed as it was repealed in 2012. Updates were made to provide consistency with all references to "improvement owner," as defined in ARM 36.25.701(7).

36.25.706 TERMINATION OF LESSEE-INITIATED CABIN SITE OR HOME SITE SALE AFTER DEPOSIT AND PROCESSING COSTS PAID BY LESSEE

(1) If the current lessee of the cabin site or home site has initiated the sale, as authorized by 77-2-361 through 77-2-367, MCA, and submitted processing costs with the department, the lessee may, subject to (2), cancel the sale by sending written notice to the department by certified mail of the current lessee's intent to cancel the sale. The lessee shall send written notice by certified mail to the department, postmarked no later than ten days before the date of the auction.

(2) To be valid, a notice of cancellation sent pursuant to (1) must be received by the department:

(a) at least 10 days before the date of the auction; and

(b) before any other person has registered for the auction by submitting a bid bond consistent with 77-2-363(2)(a), MCA, and executing a purchase agreement with the department. In the event that a sale cancellation request is received by the department on the same day that the department receives a bid bond and executed purchase agreement from another bidder, the cancellation is not valid.

(2)(3) If the lessee cancels the sale, the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(a) any costs for required environmental review if not exempt under 75-1-201, 77-1-121, or 77-2-363(6)(b)(7), MCA;

(b) through (e) remain the same.

(3)(4) The processing costs and bid deposit, as required in ARM 36.25.705(13) and 36.25.708 36.25.707(4) that are paid by the lessee must be applied toward costs incurred by the department for the canceled sale.

(4) remains the same but is renumbered (5).

AUTH: 77-1-204, 77-2-308, 77-2-328, MCA
IMP: 77-2-328, 77-2-363, MCA

REASON: The proposed amendment is necessary to add language to address the changes made in the 2023 Legislative Session in SB49. Specifically, the lessee may cancel the sale up to ten days prior to auction, unless another person has registered for the auction. In addition, updating the requirement for "giving notice" to be the date of "receiving" the written notice, rather than a "postmark" date will assist the department in processing sales and eliminating ambiguity caused by waiting for mail delivery, with potential delays in notice. Corrections are also requested for incorrect references to 77-2-363(6)(b), MCA and ARM 36.25.708(4). The correct references should be 77-2-363(7), MCA and ARM 36.25.707(4).

36.25.707 PROCEDURE FOR CONDUCTING CABIN SITE AND HOME SITE SALES (1) through (3) remain the same.

(4) A person wishing to bid upon a nominated cabin site or home site offered for sale at auction shall submit a bid deposit and execute a purchase agreement with the department. The bid deposit and purchase agreement must be ~~postmarked~~ received by the department no later than 20 days before the date of the auction.

(5) through (10) remain the same.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

REASON: The proposed amendment is necessary for changing the deadline for a bid deposit and purchase agreement to be "received" by the department, rather than being "postmarked" no later than 20 days prior to the auction. This will assist the department in processing sales and will eliminate the ambiguity caused by waiting for mail delivery, with potential delays. In addition, the change more accurately reflects the requirements of 77-2-363(2)(a), MCA, which specifies that the person bidding to purchase state land shall deposit a bid bond 20 days prior to the day of the auction.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, or e-mail at DNRCOAH@mt.gov, and must be received no later than 5:00 p.m. on December 6, 2023.

5. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written request may be mailed or

delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on September 26, 2023.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Luke Casey
Luke Casey
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.87.703, 37.87.903, 37.87.1011, 37.87.1410, and 37.106.1916 pertaining to children's mental health services	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 27, 2023, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84580174055?pwd=SDFNU3pYU0dHdVE5WkFMcTRZenZoUT09, meeting ID: 845 8017 4055, and password: 937371; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 845 8017 4055, and password: 937371. Find your local number: https://mt-gov.zoom.us/u/kPof4cbSK.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 8, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.87.703 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), COVERED SERVICES (1) Mental health center services for youth with SED include:

(a) through (d) remain the same.

(e) Outpatient therapy services provided according to an individualized treatment plan~~s~~ and such services must ~~includes~~ include:

(i) through (iii) remain the same.

(f) Targeted case management (TCM) services as defined in ~~ARM 37.87.802~~ the manual adopted and incorporated by reference in ARM 37.87.903.

(g) remains the same.

(i) To the extent otherwise permitted by applicable Medicaid rules, such mental health professional services may be billed either by the mental health center

~~either~~ as mental health center services or by the mental health professional under the applicable Medicaid category of service, but may not be billed as both mental health center services and mental health professional services.

(ii) remains the same.

(h) Home support services (HSS) and therapeutic foster care (TFC) as defined in ~~ARM 37.87.1402(5)~~ the manual adopted and incorporated by reference in ARM 37.87.903.

(i) Mental health intensive outpatient therapy (IOP) as defined in the manual adopted and incorporated by reference in ARM 37.87.903.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) through (4) remain the same.

(5) ~~Computing the time for any request provided for in this subchapter includes weekends and holidays~~ In computing any time period specified in this subchapter, every day is counted, including Saturdays, Sundays, and legal holidays. If ~~a deadline~~ the last day falls on a weekend or holiday, the deadline is the next business day.

(6) remains the same.

(7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Medicaid Services Provider Manual (manual), dated ~~October 1, 2021~~ May 12, 2023, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Medicaid Services Provider Manual, dated ~~October 1, 2021~~ May 12, 2023. A copy of the manual may be obtained ~~from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or~~ at ~~http://dphhs.mt.gov/dsd/CMB/Manuals.aspx~~ https://dphhs.mt.gov/bhdd/cmb/Manuals.

(8) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or were otherwise not in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

(9) remains the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.1011 THERAPEUTIC GROUP HOME (TGH), PROVIDER REQUIREMENTS (1) remains the same.

(2) Therapeutic group home (TGH) services may be provided ~~only~~ by ~~a~~ an in-state facility which is licensed as a TGH by the department in accordance with the

provisions of Title 52, chapter 2, part 6, MCA, and found in ARM 37.87.1011, 37.87.1017, and the manual adopted and incorporated by reference in ARM 37.87.903, or by an out-of-state facility similarly licensed in the state in which it operates.

(3) and (4) remain the same.

~~(5) As a condition of enrollment in the Montana Medicaid program, TGH providers must pay direct care workers (DCW) a minimum of $8.50 per hour.~~

~~(a) "Direct care workers (DCW)" means an employee of a Medicaid enrolled provider, who is assigned to work directly with youth or in youth-specific activities for no less than 75% of their hours of employment. A DCW is primarily responsible for the implementation of the treatment goals of the youth. DCW does not include professional staff.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.1410 THERAPEUTIC FOSTER CARE (TFC), PROVIDER REQUIREMENTS (1) through (3) remain the same.

(4) The clinical lead must:

(a) provide direction and consultation to the FSS to address the clinical needs of the youth and the needs of the caregiver as identified in the youth's individualized treatment plan (ITP);

(b) respond to the youth's and the caregiver's needs when the FSS is not available;

(c) through (5) remain the same.

(6) The following requirements must be met by either the clinical lead, the FSS, or both:

(a) provide contacts at the frequency, location, and duration that are sufficient to meet the identified needs of the youth and the caregiver, with the duration of the contacts ~~are~~ not limited;

(b) conduct a minimum of four scheduled contacts or sessions with the caregiver in each four-week period, two of which must be face-to-face within the home and community environment, excluding the provider's office or facility, based on the needs of the caregiver that are ~~and~~ documented in the ITP;

(c) conduct a minimum of two scheduled ~~face-to-face~~ treatment sessions with the youth, one of which must be face to face, within the home and community environment, excluding the provider's office or facility, ~~with the youth~~ in each four-week period, based on the needs of the youth that are ~~and~~ documented in the ITP; ~~and~~

(i) For both requirements in (b) and (c), face-to-face delivery of the treatment services is preferred. Telehealth may be substituted if clinically indicated or if the youth does not have access to face-to-face services. Case notes must include the reason(s) for telehealth delivery of service, including documentation of attempts to identify local supports, if the need for telehealth delivery of services is related to access issues; and

(d) and (7) remain the same.

(8) The provider of TFC must use a research-based practice curriculum ~~specific~~ to provide family-based services. Staff training in the research-based practice must be documented in the provider's personnel records.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, MCA

37.106.1916 MENTAL HEALTH CENTER: INDIVIDUALIZED TREATMENT PLANS (1) Based upon the findings of the assessment(s) conducted in accordance with ARM 37.106.1915, each mental health center must establish an individualized treatment plan for each client within 24 hours after admission for crisis stabilization program services and within five contacts, or 21 days from the first contact, whichever is later, for other services. The treatment plan must:

(a) and (b) remain the same.

(c) for each objective, describe the service(s) or intervention(s) with sufficient specificity to demonstrate the relationship between the service(s) or intervention(s) and the stated objective;

(d) remains the same.

(e) include the signature of the client~~'s~~ or parent/legal representative/guardian~~'s signature~~ and date indicating participation in the development of the treatment plan. If participation of the client~~'s~~ or parent/legal representative/guardian~~'s participation~~ is not possible or inappropriate, written documentation must indicate the reason such participation is not possible;

(f) include the signature and date of the mental health center's licensed mental health professional and of the person(s) with primary responsibility for implementation of the plan, indicating development and ongoing review of the plan. If intensive care management is the only service being received by the client from the mental health center, a program supervisor must sign the treatment plan indicating the supervisor's review and approval for appropriateness; and

(g) through (4) remain the same.

(5) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted ~~face-to-face~~ and include:

(a) through (7) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.87.703, 37.87.903, 37.87.1011, 37.87.1410, and 37.106.1916. The following summaries explain programmatic changes and the reasonable necessity for the proposed rule amendments.

Mental Health Intensive Outpatient Therapy (IOP) for Youth With Serious Emotional Disturbance (SED)

The department's Children's Mental Health Bureau (CMHB) offered several provider flexibilities during the public health emergency (PHE). Mental Health Intensive Outpatient Therapy was approved as a temporary service during the PHE, and CMHB now proposes to make the service a permanent benefit. This change will increase access to mental health services for Montana youth. Adding this benefit requires updates to ARM 37.87.703 and the Children's Mental Health Medicaid Services Provider Manual (manual).

Face-to-Face Requirements for Youth With SED Community-Based Services

CMHB waived face-to-face requirements for many community-based services during the PHE, which allowed providers flexibility to serve clients and increased access to care. To continue to allow increased access to youth mental health services, CMHB proposes updates to the manual, ARM 37.87.1410, and 37.106.1916 for the following services to continue to permit the provision of certain services by means of telehealth:

- Home Support Services (HSS);
- Therapeutic Foster Care (TFC) and Therapeutic Foster Care Permanency (TFOC-P);
- Comprehensive School and Community Services (CSCT);
- Community Based Psychiatric Rehabilitation and Support Services (CBPRS); and
- Individualized Treatment Plan meetings for all Mental Health Center (MHC) services.

Prior Authorization Requirements for Partial Hospitalization Services (PHP) and Extraordinary Needs Aide (ENA)

The prior authorization requirements for PHP and ENA were suspended during the PHE, and CMHB now proposes to remove prior authorization requirements for these services permanently. This change will support access to care for Montana youth and requires updates to the manual.

Continued Stay Review (CSR) Requirements for Therapeutic Group Home (TGH) Providers

CMHB is proposing updating the manual to allow TGH providers to submit continued stay reviews for medical necessity up to 30 days prior to the last covered day of the current authorization period. This update will support the transition of youth when a stay is no longer medically necessary.

Out-of-State Therapeutic Group Home (TGH) Providers

The current language in ARM 37.87.1011(2) specifies a Montana license is required to provide therapeutic group home services. The department proposes to update this rule to include the same licensure requirements for out-of-state therapeutic group homes to align with current practice.

Rule Clean Up

The department proposes to update language in the manual to accurately reflect current practices. The department is also updating current language in ARM

37.87.1011(5) to align with current practice. The department does not monitor direct care staff wages as a condition of Medicaid enrollment and, therefore, is removing the reference to an outdated minimum pay requirement for direct care workers.

Fiscal Impact

The following fiscal impact is associated with the addition of Mental Health Intensive Outpatient Therapy for Youth with Serious Emotional Disturbance as a permanent benefit. There is no other fiscal impact associated with these proposed changes.

Service	Federal Fiscal Year (FFY)	Total Funds	Federal Funds	State Funds
Mental Health Intensive Outpatient Therapy	FFY 23 (3 mos)	$50,886	$32,628	$18,258
	FFY 24 (12 mos)	$215,442	$138,141	$77,300

5. The department proposes to make the above-stated rules retroactively effective to May 12, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., December 1, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401, 42.19.402, 42.19.405, and 42.129.407 pertaining to residential property tax assistance program improvements	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 27, 2023, at 1:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 10, 2023. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 68th Montana Legislature enacted several pieces of property tax relief legislation which included modification of the Property Tax Assistance Program (PTAP), Montana Disabled Veteran Property Tax Assistance Program (MDV), and Intangible Land Value Property Tax Assistance Program through House Bill 189 (HB 189), House Bill 325 (HB 325), and House Bill 459 (HB 459).

HB 189 expanded PTAP by increasing the amount of residential property value eligible for tax assistance from $200,000 to $350,000, based on market value of residential real property. HB 189 also requires the department to increase the property value eligibility amount after each two-year reappraisal cycle using an inflation index based on the change in the market value of the median home value of all residential real properties participating in PTAP. HB 325 expanded the definition of unusual circumstances in income that the department must consider when determining continued eligibility in MDV. HB 459 revised the statutory deadline for a property owner to apply for the Intangible Land Value Property Tax Assistance Program in the first year of the two-year valuation cycle from March 1 to within 30 days from the date on the owner's property classification and appraisal notice. HB 459 also expands the exemption process for applications submitted after 30 days from the date on the classification and appraisal notice.

Based on the above-described legislative changes, this rulemaking is necessary to align ARM 42.19.401, 42.19.402, and 42.19.407 with the statutes amended by the respective bills.

The department also proposes numerous amendments to the above-described rules, as a part of Governor Gianforte's Red Tape Relief Initiative, to simplify administrative rules through the removal of redundancies to statute and clarification of department procedures and/or requirements.

While this general statement of reasonable necessity covers the basis for the proposed rule amendments, it is supplemented below to explain rule-specific proposals.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (PTAP) AND MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM; APPLICATION PROCESS; DETERMINATIONS; PROGRAM COMPLIANCE (1) ~~The property owner of record or the property owner's agent~~ A qualifying applicant, as defined in ARM 42.19.405, must ~~make application~~ apply to the ~~local~~ department ~~office~~ in accordance with, and subject to the eligibility requirements of 15-6-302, MCA, and this rule to receive the PTAP benefit provided ~~for~~ in 15-6-305, MCA, or the MDV benefit provided ~~for~~ in 15-6-311, MCA.

(2) The PTAP benefit is administered ~~through~~ as a reduced property tax rate that applies up to ~~the first $200,000 or less of~~ the appraised market value limit authorized by and adjusted under 15-6-305, MCA, of the qualifying applicant's ~~residential real property~~ primary residence.

(a) A primary residence is defined in 15-6-301, MCA, as a dwelling where the qualifying applicant lived for at least seven months of the tax year for which benefits are claimed. Provided, a primary residence may include more than one dwelling and the time of residency in each may be combined to meet the seven-month requirement.

(b) When the appraised market value of a primary residence exceeds the statutory limit, as adjusted, the department will apply the reduced tax rate up to that limit and then apply the standard tax rate to the difference between the limit and the residence's appraised value.

(3) The MDV benefit is administered ~~through~~ as a reduced property tax rate ~~that applies to~~ for the ~~residential real property~~ primary residence of a qualified veteran or qualified veteran's spouse, as provided ~~for~~ in 15-6-301 and 15-6-311, MCA, and is based on a statutory schedule of qualifying income for an applicant or an applicant's spouse.

(4) The department will accept an application, in the form provided by the department, through U.S. mail or electronic mail, in person, or by telephone. If a qualifying applicant applies by telephone, the department may assist the applicant in its completion and note telephonic submission of the application in the property assessment records.

(a) Mailed applications must be postmarked by April 15 of the year first claimed. Mailed applications received after April 15 will be processed for the following tax year.

(i) The application deadline does not apply for a first-time applicant submission occurring within 30 days from the date on their classification and

appraisal notice.

(ii) The department may waive the application deadline when a substantiated hardship case exists. The department must document its justification for a deadline waiver.

(b) A qualifying applicant is not required to reapply for each succeeding year but is subject to the annual verification process described in 15-6-301, MCA, and in (7), (10), and (11).

~~(a)~~ (5) ~~The reduced property tax rate does~~ Except as provided in (6), PTAP and MDV benefits may not apply to separately described or assessed parcels of land that do not support the primary residential improvements. ~~, regardless of whether those parcels of land are contiguous with or adjacent to the primary residential property.~~

~~(b)~~ (6) If the primary residence is a mobile home or manufactured home that is assessed separately from the land ~~upon which it is located, both~~, the mobile home or manufactured home and the land ~~upon which it is located~~ may qualify for ~~the~~ a benefit if they are both owned by the qualifying applicant. If the land is not owned by the qualifying applicant, ~~the~~ a benefit applies only to the mobile home or manufactured home. ~~To be eligible, the property must be:~~

~~(i) owned by the applicant; or~~

~~(ii) under contract for deed; and~~

~~(iii) used as the applicant's primary residence.~~

~~(3)~~ (7) ~~A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence must be the only residence for which the taxpayer claims property tax assistance in a given tax year.~~ A qualifying applicant must attest to property ownership upon initial application and in connection with an annual verification. The department may request proof of residency to ensure the property applied for under the PTAP or MDV programs qualifies as a primary residence under (2).

(a) Examples of acceptable proof of residency include:

(i) federal or state tax returns, a driver's license, car registrations, hunting or fishing licenses, or a voter registration that lists the address of the primary residence;

(ii) employment records listing the primary residence as the place of residence; or

(iii) copies of bills and correspondence sent to the primary residence address.

(b) Temporary residency changes, such as admission to a hospital, nursing home, or similar facilities do not change an applicant's primary residence for the purposes of PTAP or MDV benefits.

(8) The department will apply ~~the full year~~ a benefit to the primary residence for the entire tax year when:

(a) a qualifying applicant owns and ~~occupies~~ lives in the primary residence ~~at the time~~ when the department provides the tax roll ~~is provided~~ to the county treasurer for billing. If ~~the property~~ ownership changes between that time and the end of the calendar year, the benefit remains on the ~~property~~ primary residence for the ~~full~~ entire tax year; or

(b) in the case of a separately assessed mobile home or manufactured home, a qualifying first-time applicant receives a classification and appraisal notice from the department, ~~and applies for the property tax assistance within 30 days from the date on the notice affirming that their home is their primary residence~~ applies for a benefit pursuant to the requirements of 15-6-302, MCA, and this rule, and receives written approval from the department.

~~(4)~~ (9) ~~If a qualifying applicant owns and lives in one Montana dwelling for less than 7 months during the tax year, and in another Montana dwelling for less than 7 months of the same tax year, the time in both dwellings can be combined to meet the 7-month requirement.~~ When a change in ~~the property~~ ownership of the primary residence occurs ~~prior to the time~~ before the department provides the tax roll ~~is provided~~ to the county treasurer~~'s office~~ for billing, the department will apply ~~the~~ a benefit as follows:

(a) if a qualifying applicant ~~owned and occupied the property~~ lived in a primary residence for less than ~~7~~ seven months of the tax year, the department will remove the benefit from the ~~property~~ tax rolls. However, ~~The~~ a benefit may be combined as described in (2) and transferred to another primary residence~~, if the qualifying applicant purchases one, as provided in 15-6-301, MCA~~; or

(b) if a qualifying applicant ~~owned and occupied the property~~ lived in the primary residence for at least ~~7~~ seven months of the tax year, the department will apply the benefit ~~for the number of days that the qualifying applicant owned and occupied the property, based~~ on a per-day basis using the date of sale. Once the qualifying applicant no longer owns the primary residence, ~~T~~the property will be assessed at the full tax rate for the remaining portion of the tax year ~~following~~ from the date of sale.

~~(5) An applicant may demonstrate the 7-month occupancy requirement in (4) with such indicators including, but not limited to:~~

~~(a) the mailing address for receipt of bills and correspondence;~~

~~(b) the address on file with the applicant's employer as the place of residence; and~~

~~(c) the mailing address listed on the applicant's federal and state tax returns, driver's license, car registration, hunting and fishing licenses, or voter registration.~~

~~(6) A temporary stay in a nursing home or similar facility will not change an applicant's primary residence for the purposes of the PTAP or MDV benefits.~~

~~(7) The benefit does not transfer to the new owner of the dwelling.~~

~~(8) A property owner of record or the property owner's agent must file an application that is postmarked by April 15 of the year for which the assistance is first claimed. Applications received after that date will be processed and entered into the department's income and eligibility verification process for the following year.~~

~~(9) The department may accept applications through regular or electronic mail, in person, or by telephone. If by telephone, the employee shall verify that the applicant has affirmed their eligibility and affirmed that the dwelling is their primary residence by signing the form on the applicant's behalf and initialing the signature.~~

~~(10) An applicant is not required to reapply once the department has entered their application into its verification process except as provided in (3) and (4).~~

~~(11) The April 15 application deadline is waived if a first-time applicant forwards an application to the department within 30 days from the date on the~~

~~classification and appraisal notice.~~

~~(12) The department may waive the April 15 application deadline at any time the department's local office or the department's taxpayer advocate consults with local aging services or disability offices and confirms a hardship case exists. The department must document its finding.~~

~~(13) The department may coordinate with the Social Security Administration and the Veterans Affairs Administration to verify the income and eligibility of applicants and participants.~~

~~(14)~~ (10) Each year after the application deadline, the department will:

(a) verify the qualifying income and eligibility of ~~applicants and~~ PTAP and MDV program participants;

(b) ~~grant~~ approve, renew, or deny ~~the~~ applicant~~'s~~ benefits, in writing; and

~~(c) advise applicants and participants of the department's determination in writing; and~~

~~(d)~~ (c) ~~advise taxpayers~~ notify PTAP and MDV program participants of their right to appeal the department's determination to the Montana Tax Appeal Board within 30 days of receiving a determination letter.

~~(15)~~ (11) ~~The information applicants provide the department is subject to the false swearing penalties established in 45-7-202, MCA.~~ In accordance with 15-6-302, MCA, ~~The~~ the department may:

(a) ~~may~~ investigate the information provided in an application and an applicant's continued eligibility;

(b) ~~may~~ request an applicant to verify ~~the~~ occupancy of their primary residence; and

(c) ~~will~~ review, on a case-by-case basis, any applicant or program participant for whom ~~it's~~ the verification process finds no source of income and ~~record its findings for future use~~ document the same.

~~(16)~~ (12) The department may address unusual circumstances of ownership and income that arise in administering ~~this~~ the PTAP and MDV programs such as:

(a) ~~confusion~~ property ownership issues when a ~~spouse dies and the other spouse is not yet on the property's deed~~ person dies and title to the property has not yet been transferred to their spouse; or

(b) remains the same.

(13) The department may also consider the additional unusual circumstances for MDV program eligibility described in 15-6-302, MCA.

AUTH: 15-1-201, 15-6-302, MCA
IMP: 15-6-301, 15-6-302, 15-6-305, 15-6-311, 15-6-312, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes the following amendments:

1. Revise the catchphrase of the rule to better detail the rule's inclusion of application, determination, and compliance requirements.

2. Amend (1) to use terminology adopted in statute or rule and generally revise sentence structure to improve the rule section.

3. Amend the appraised market value reference in (2), consistent with HB 189's changes to 15-6-305(2), MCA, but defer to the statute to alleviate future rulemaking to change an amount that is subject to change by the Legislature. Subsection (2)(a) is proposed as a necessary reiteration of 15-6-301, MCA, and a relocation and revision of text from current (3) and (4). Subsection (2)(b) is proposed for inclusion to provide taxpayer guidance of department procedures where the value of the principal residence exceeds the statutory limit. Neither statute nor existing rule addresses this occurrence and the department believes the guidance is necessary.

4. Section (3) is proposed to clarify rule text and to amplify the statutory provision of income schedules that govern the MDV program.

5. Proposed (4) is the relocation and revision of text from current (9) through (12) to improve the structure of the rule from its current form and to clarify application submission processes, some of which are derived from HB 459.

6. Proposed (5) and (6) reflect a renumbering and revision of current (2)(a) and (b). The sections clarify the allowable exception to separately assessed parcels and remove text which is unnecessarily redundant to statute while conforming terminology to the rule as a whole.

7. Proposed (7) reflects the removal of text that is unnecessarily redundant to statute and relocates and restates the documentation requirements in (5) to improve clarity.

8. Proposed (8) restates text to improve clarity and provides necessary procedural guidance for first-time program applications.

9. Section (9) proposes the removal of text that is unnecessarily redundant to statute and/or restates, for clarity, department processes relative to an applicant/program participant combining primary residences to achieve the seven-month residency requirement. The amendments also seek to clarify department processes for transferring or prorating, as applicable, the reduced tax rate benefit when an applicant/program participant sells their property.

10. Strike current (5) through (13), which is necessary to support the overall goal of the rulemaking stated above, remove unnecessary redundancies found in 15-6-301, 15-6-302, or 15-6-311, MCA, and relocate text to restructure sections of the rule.

11. Proposed (10) through (12) restate text to improve clarity, provide necessary procedural guidance, and also provide necessary statutory attribution for the department's authority in the administration of the PTAP and MDV programs.

12. Proposed (13) is a necessary cross-reference to 15-6-302, MCA, to implement HB 325's amendments regarding additional ownership and unusual income circumstances for MDV program participants.

42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM (PTAP) AND FOR MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM (1) Sections 15-6-301, 15-6-302, 15-6-305, ~~and~~ 15-6-311, and 15-6-312, MCA, provide property tax relief to fixed or limited income homeowners, qualified disabled veterans, and qualified veterans' spouses. ~~Sections 15-6-302,15-6-305, and 15-6-311, MCA, also require the~~

~~department to annually adjust the income levels used to determine the eligibility and the amount of relief to account for the effects of inflation.~~

(2) ~~The calculation of the inflation factor shall be made on a yearly basis as follows:~~ The department annually adjusts the PTAP and MDV programs base year qualifying income levels provided in 15-6-305 and 15-6-311, MCA, respectively, for the effects of inflation.

(a) remains the same.

~~(b) The formula for the calculation of the inflation factor is as follows:~~

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t\,o}}$$

~~where:~~

~~IF_t equals the inflation factor for property tax year t,~~

~~$PCE_{(t-1)}$ is the price index value for personal consumption expenditures for the first quarter of the year prior to the tax year in question,~~

~~$PCE_{t\,o}$ is the price index value for personal consumption expenditures for the first quarter of 2015~~

~~(c)~~ (b) ~~The inflation factor, calculated per the previous section, is used to annually adjust the base year income schedules for the effects of inflation.~~ Each income figure in the base year income schedule is multiplied by the inflation factor calculated for the tax year in question in order to update the schedule. The product is then rounded to the nearest whole dollar amount. If the adjustment results in a decrease in qualifying income levels from the previous year, the qualifying income levels must remain the same for that year.

(3) ~~The base year income levels for PTAP and MDV are provided in 15-6-305 and 15-6-311, MCA, respectively.~~ The department shall adjust the market value limit for residential real property for inflation after each two-year reappraisal cycle in accordance with 15-6-305, MCA. The department will finalize the market value limit by rounding it to the nearest $1,000.

(4) The department will publish PTAP and MDV qualifying income levels and market value limit annually on the department's website at http://www.mtrevenue.gov.

AUTH: 15-1-201, MCA
IMP: 15-6-191, 15-6-301, 15-6-302, 15-6-305, 15-6-311, 15-6-312, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.19.402 which is necessary to implement HB 189 changes to PTAP. HB 189

rebased the personal consumption expenditures (PCE) inflationary factor found in 15-6-301, MCA, to adjust the base year qualifying income levels in the PTAP and MDV programs from the first quarter of 2015 to the first quarter of 2023.

The department also observes that the current inclusion of the technical formula in current (2)(b) does not lend to a greater understanding of the inflation adjustment by those persons affected by the changes; and given the detailed explanation of the inflation factor calculation procedure in (2), the department proposes to remove the formula from (2)(b) to simplify the rule. Notwithstanding, the department will continue the use of the formula in its calculations and the formula will be made available to taxpayers upon request.

The department's proposed amendments to (3) are consistent with the general statement of reasonable necessity and the need to implement HB 189, and further that the department will round the market value limit to the nearest $1,000 for ease of administering the PTAP program.

The department proposes new (4) to inform the public of the availability of supporting information – not requirements - for PTAP and MDV programs which may be found on the department's website, and updated according to 15-6-305, MCA.

42.19.405 DEFINITIONS The following definitions apply to rules in this subchapter.

(1) and (2) remain the same.

(3) "Qualifying applicant" means:

(a) an individual who is the record owner of the land and improvements that are the primary residence of the individual or who is purchasing the property under a contract for deed; or

(b) through (4) remain the same.

~~(5) "Residential real property" means the land and improvements of a taxpayer's primary residence.~~

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-134, 15-6-240, 15-6-301, 15-6-302, 15-6-305, 15-6-311, 15-6-312, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.19.405 through an addition of text to (3)(a) which reflects 15-6-302(2), MCA, and confirms that a qualifying applicant under PTAP or MDV may own the primary residence pursuant to a contract for deed. The department also proposes to strike the definition for "residential real property" in (5) because the definition has limited use and could be confusing versus the definition of "principal residence" found in 15-6-301, MCA.

42.19.407 INTANGIBLE LAND VALUE PROPERTY TAX ASSISTANCE PROGRAM FOR RESIDENTIAL PROPERTY (1) Property ~~taxpayers~~ owners who meet~~ing~~ the requirements of the intangible land value property tax assistance program, ~~as described~~ provided in 15-6-240, MCA, may ~~submit an application~~ apply for assistance ~~to the department. The application form is available~~ on the

department's ~~web site at revenue.mt.gov~~ form at http://www.mtrevenue.gov.

(2) Applications must be submitted ~~by March 1 in order to be considered for the current tax year as provided in 15-6-240, MCA~~ within 30 days from the date on the classification and appraisal notice for the exemption to be considered for both years of the two-year valuation cycle.

(a) Applications submitted more than 30 days from the date on the classification and appraisal notice will apply to the second year of the two-year valuation cycle only.

(b) An applicant who does not apply during the first year of the valuation cycle must apply by March 1 of the second year of the valuation cycle.

(3) A ~~Q~~qualifying applicant~~s~~ shall affirm that the property owned ~~and maintained by the applicant~~ is the applicant's primary residence. ~~If verification is necessary, the applicant may demonstrate they meet this requirement with such indicators including, but not limited to~~ The department may require the applicant document that the property applied for under the program qualifies as a primary residence. Examples of acceptable proof of residency include:

~~(a) the mailing address for receipt of bills and correspondence;~~

~~(b) the address on file with the applicant's employer as the place of residence; or~~

~~(c) the mailing address listed on the applicant's federal and state tax returns, driver's license, car registration, hunting and fishing licenses, or voter registration.~~

(a) federal or state tax returns, a driver's license, car registrations, hunting or fishing licenses, or a voter registration that lists the address of the primary residence;

(b) employment records listing the primary residence as the place of residence; or

(c) copies of bills and correspondence sent to the primary residence address.

(4) A ~~Q~~qualifying applicant~~s~~ must provide documentation that their land f~~or which the applicant is seeking assistance~~ has been owned by the applicant or a family member of the applicant within three degrees of consanguinity (ancestral line of descent) for at least 30 consecutive years. Examples of A~~a~~cceptable ~~types of~~ documentation include~~, but are not limited to~~:

(a) ~~property~~ deeds showing ownership of the land;

(b) property tax records indicating ownership ~~in the name of~~ by the applicant;

(c) bills of sale indicating ownership ~~in the name of~~ by the applicant; or

(d) documents showing ~~the~~ transfer of the land from one degree of consanguinity to the next ~~degree~~.

(5) Computation of ~~the degree of~~ consanguinity is calculated as follows:

(a) through (c) remain the same.

(6) As described in 15-6-240, MCA, if the department's appraised value of the land is greater than 150 percent of the appraised value of the primary residence and improvements situated on the land, then the land is valued at 150 percent of the appraised value of the primary residence and improvements, subject to the following:

(a) The subject property will not qualify if the land value is less than the statewide average of the land multiplied by the acreage of land of the subject property~~.~~; and

(b) and (7) remain the same.

(8) In order to meet the requirements of (6), a ~~Q~~qualifying applicant~~s are~~ is required to reapply for the intangible land value property tax assistance program each property valuation cycle. The supporting documentation outlined in (4) may be required with any reapplication~~s~~.

AUTH: 15-1-201, MCA
IMP: 15-6-240, 15-6-301, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to simplify the rule text through a general revision of (1), (3), (4), and (5), such as replace "submit an application" with "apply," and provide consistent referencing across the rule subchapter. The department must also update its website reference through which application forms are primarily accessed.

Since qualifying property owners are often not aware of their eligibility for the tax assistance until they receive their classification and appraisal notice in the first year of the valuation cycle, the department proposes to remove the March 1 application deadline in (2) because the department typically mails notices in June in the first year of the valuation cycle, which is past the March 1 deadline. Subsections (2)(a) and (b) are also proposed to implement HB 459's additional amendments to 15-6-240, MCA, when applications are submitted after 30 days from the date on the classification and appraisal notice.

Section (4) also proposes to remove "include, but are not limited to" language in favor of "examples" because the former is primarily a legal term of art more commonly applied in contracts and the proposed amendments are simpler and provide the same legal effect for the rule.

The amendment to (8) proposes to clarify the requirement for a property owner to reapply every two years as qualified applicants may not qualify for the exemption in subsequent valuation cycles based on property value changes in the market.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 4, 2023.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject

matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The respective primary bill sponsors were contacted by email on September 27, 2023 and October 23, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.155 and 42.22.1311 pertaining to 2024 Personal Property Depreciation Schedules and Trend Tables	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 27, 2023, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 10, 2023. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. STATEMENT OF REASONABLE NECESSITY. The department proposes to amend ARM 42.21.155 and 42.22.1311 to update the authority of the web-based Personal Property Depreciation Schedules and Trend Tables publication (publication), adopted and incorporated by reference in the rules, to the 2024 version. The publication is updated annually, effective January 1, and is located within the department's website at http://www.mtrevenue.gov. The 2024 publication reflects changes in personal property and industrial machinery and equipment depreciation and trend factoring data in the department's valuation manuals and guides since last year. Both the 2023 publication and the proposed 2024 publication are available for review.

The department also proposes to amend ARM 42.21.155(4)(b) to correct a misstated Marshall and Swift Guide trend category which arose from the department's 2019 updates to the rule's subsections. The error has been in the rule text only, not in the department's calculation of office and commercial equipment depreciation, which has been correct.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.21.155 PERSONAL PROPERTY CATEGORIES AND TRENDED DEPRECIATION METHODOLOGIES (1) through (3) remain the same.

(4) The department shall post its trended depreciation schedules for the

upcoming tax year for the categories of personal property described below on the department's ~~internet~~ website located at http://www.mtrevenue.gov. The department adopts and incorporates by reference its ~~2023~~ 2024 Personal Property Depreciation Schedules and Trend Tables publication, effective January 1, ~~2023~~ 2024. The Depreciation Schedules and Trend Tables publication contains the detailed schedules and tables the department uses for valuing personal property and industrial machinery and equipment. The personal property categories and trended depreciation methodologies that apply to the Depreciation Schedules and Trend Tables publication are as follows:

(a) remains the same.

(b) Office and Commercial Equipment - a five-year depreciation and a residual percentage will be applied to non-computerized equipment such as office equipment and furnishings, specialized medical equipment, janitorial equipment, coin-operated washers and dryers, beauty, and barber shop equipment, tanning beds, furnishings for hotels, motels, rental apartments, rental homes, nursing home and other care facilities, and locally assessed cable tv dishes. The trend factors are calculated from the ~~average of all~~ office equipment category of the Marshall & Swift Guide.

(c) through (h) remain the same.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-202, 15-6-207, 15-6-213, 15-6-219, 15-8-111, MCA

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

(2) The department shall post its trend factor tables for industrial machinery and equipment for the upcoming tax year on the department's ~~internet~~ website located at http://www.mtrevenue.gov. The department adopts and incorporates by reference its ~~2023~~ 2024 Personal Property Depreciation Schedules and Trend Tables publication, effective January 1, ~~2023~~ 2024. The Depreciation Schedules and Trend Tables publication contains the detailed schedules and tables the department uses for valuing personal property and industrial machinery and equipment.

(3) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-8-111, MCA

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 4, 2023.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the publication referenced in the above-referenced rules may significantly and directly impact small businesses. While the extent of any potential impact is fact-dependent on the circumstances of each taxpayer, the department notes the following impactful changes based on the valuation resources adopted by the department:

- Except as noted below for office equipment, personal property taxpayers are likely to see an increase in the taxable value of their property in 2024 as compared to 2023. The anticipated increase in taxable value is the result of the valuation process which first trends the acquired cost to an approximate current value before applying depreciation. The department has used the same source for trend factors for many years.
    - The 10-year average rate of increase in the trend factors for miscellaneous furniture and fixtures is 3.88%–the 2024 trend increased 1.71%.
    - The 15-year average rate of increase in the trend factors for oil and gas field equipment is 3.19%–the 2024 trend increased 2.11%.
    - The 30-year average rate of increase in the trend factors for farm machinery and equipment is 2.95%–the 2024 trend increased 1.17%
    - The 30-year average rate of increase in the trend factors for heavy equipment is 2.75%–the 2024 trend increased 4.09%

- The 5-year average rate of increase in the trend factors for office equipment is 6.81%–the 2024 trend decreased 12.91%.

11. The department intends the effective date of these rule amendments and the publication adopted and incorporated by reference to be January 1, 2024.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 24, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2403 pertaining to determining a valid write-in vote in manually counting and recounting paper ballots	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 29, 2023, at 1:00 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., November 22, 2023, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or email Andrew.Ritter@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER BALLOTS (1) Before being counted, each questionable write-in vote on a paper ballot set aside under 13-15-206, MCA, must be reviewed by the designated board. The board shall evaluate each questionable vote according to the rules below:

(a) If a majority of the designated board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the designated board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) ~~Except as provided in (3), o~~Only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211, MCA, and the oval, box, or other designated voting area on the ballot is marked. The following rules shall apply to determining a valid write-in vote in a count or recount of paper ballots, and must be read in conjunction with ARM 44.3.2402:

(a) a name is written in, but the designated write-in voting area is not marked, and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

(b) no candidate name or office is written in, but the designated write-in voting area is marked and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

(c) a printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election officials shall cause a vote to be counted for the printed candidate;

(d) a printed candidate is selected by marking of the designated voting area, any individual's name is written in, and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election officials shall cause this to be designated as an overvote. If the name written in is the same as the name of the printed candidate selected, the election officials shall cause a vote to be counted for the printed candidate selected~~.~~;

(e) the designated voting area for a printed candidate is marked and the same name is written in, but the designated write-in voting area is not marked. The election officials shall cause a vote to be counted as a vote for the marked designated voting area;

(f) comments are written in which do not indicate a clear vote and no candidate is marked. The election officials shall cause this to be designated as an undervote;

(g) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be counted as a vote for the printed candidate unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election officials shall cause this to be designated as an undervote;

(h) at least one printed candidate appears as a candidate for the office and the designated voting area is not marked for any printed candidates, but a name is written in that is not the name of a declared write-in candidate and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be designated as an undervote.

~~(3) Consistent with 13-10-211, MCA, votes for undeclared write-in candidates may be counted if:~~

~~(a) an election is held;~~

~~(b) a person's name is written in on the ballot;~~

~~(c) the person is qualified for and seeks election to the office for which the person's name was written in; and~~

~~(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.~~

AUTH: 13-15-206, MCA; [HB 536 (2023)]
IMP: 13-10-211, 13-15-206, MCA

REASONABLE NECESSITY: During the 68th Legislative Session, the Governor of Montana signed into law House Bill (HB) 536. HB 536 removed an

exception to write-in candidate filing requirements. The proposed amendment removes the same exception from the rule to align with the statute.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this proposed rule amendment will not have a fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., December 1, 2023.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. With regard to the bill sponsor contact requirements of 2-4-302, MCA, the primary bill sponsor, Representative Julie Dooling, was contacted by phone on October 10, 2023, and by email on October 13, 2023.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 24th day of October, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2408 pertaining to ballot form and uniformity	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 29, 2023, at 1:30 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., November 22, 2023, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or email Andrew.Ritter@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

44.3.2408 BALLOT FORM AND UNIFORMITY (1) In accordance with 13-12-202, MCA, on the Secretary of State's website (sosmt.gov) is the Ballot Layout Guide which county election administrators must follow to ensure uniformity of the ballot form for each type of ballot used in the state. ~~The secretary of state adopts and incorporates by reference the document entitled "Ballot Form and Uniformity Pursuant to 13-12-202 MCA Layout Instructions and Sample Ballots," which is available on the secretary of state's web site at the following link: http://sos.mt.gov/Elections/Officials/Forms/index.asp, updated March 20, 2012.~~

~~(2) The document incorporated by reference is provided to each election administrator and contains guidelines that prescribe the ballot form for each type of ballot used in this state, giving guidelines as to font, spacing, and printed instructions, to conform to the requirements of 13-12-202, MCA.~~

AUTH: 13-1-202, 13-12-202, MCA
IMP: 13-1-202, 13-12-202, MCA

REASONABLE NECESSITY: The proposed changes to the rule clarify the requirement that county election administrators must follow the standards outlined in the Ballot Layout Guide that is published on the Secretary of State's website to strengthen the uniformity required by 13-12-202, MCA.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this proposed rule amendment will not have a fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., December 1, 2023.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 24th day of October, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the administration of the Emergency Shelter Facility Grant (ESFG) Program	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 8, 2023, the Department of Commerce published MAR Notice No. 8-111-203 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 949 of the 2023 Montana Administrative Register, Issue Number 17.

2. The department has adopted NEW RULE I (8.111.901) as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT NO. 1: Comments were received ensuring shelters are accessible and visitable.

RESPONSE NO. 1: A question in the application has been expanded to requests information on the accessibility features of proposed projects.

COMMENT NO. 2: A commenter asked if matching funds can be provided by a local government.

RESPONSE NO. 2: No. The language in the application guidelines comes from the legislation, which states, "For grants in an amount of $25,000 or more, the grant recipient shall document the availability of matching funds or in-kind contributions of assets with an appraised value from private sources representing at least $1 in value for each $1 of the grant." Department staff will be available to assist nonprofits in documenting this requirement.

COMMENT NO. 3: A commenter requested that Capital Needs Assessment (CNA) for adaptive reuse projects not be required.

RESPONSE NO. 3: The guidelines make this requirement only for rehabilitation projects (including adaptive reuse) with a total project cost of more than $500,000. The intent of this requirement is to ensure all local code, health and safety issues are being addressed by the project, to ensure beneficiaries are safe, and to create long-term solutions. The CNA serves to identify all potential issues and ensure that they are being addressed in the scope of work. It also provides a basis for establishing cost estimates that are as accurate and complete as possible. For

projects costing less than $500,000, the Department will accept other documentation that supports the proposed scope of work and project budget and indicates all outstanding code, health and safety issues within an existing building will be addressed. Projects that do not provide a CNA or thorough documentation supporting the proposed project scope and budget will be ranked lower than those that do. In the event an applicant is unable to provide a CNA with the application submission, a CNA can be provided after funds are awarded but prior to the start of the project. A CNA is an eligible expense for ESFG funds, or matching funds may be used to cover this expense.

COMMENT NO. 4: A commenter asked if ESFG can pay for hot water heaters, washers, dryers, etc.

RESPONSE NO. 4: Water heaters, washers, dryers, other appliances would be eligible costs as part of a proposed project. The intent of prohibiting the use of ESFG funds for furnishings is to ensure the investment makes a long-term difference in communities. Furnishings that need to be replaced on a frequent basis are considered operating expenses and not eligible "general capital improvements" as outlined in the legislation.

COMMENT NO. 5: A commenter said that several shelters are not using HMIS currently because the system is too burdensome so it should not be required for ESFG. Using HMIS should be required because it makes stronger applications to HUD for funds through the Continuum of Care.

RESPONSE NO. 5: Consistent reporting is the intent of having recipients report data in HMIS. The legislation requires reporting to the Department of Commerce "to track the outcomes of allocated grants." The department intends to require the reporting of data similar to what is reported in HMIS. To accommodate the conflicting public comment, the guidelines have been adjusted to delete the requirement to enter the data in HMIS if a nonprofit is not currently doing so. However, the department will collect similar data from nonprofits not using HMIS and consider options for executing a memorandum of understanding to provide that information to the MT Continuum of Care. Privacy of beneficiaries will be protected as permitted by law.

COMMENT NO. 6: A commenter asked what remediation requirements are there with respect to MEPA compliance.

RESPONSE NO. 6: The Montana Environmental Protection Act does apply to the ESFG program. Projects that will have an impact on the natural or human environment must comply with MEPA's process. Department staff will be available to assist nonprofits in meeting that requirement.

COMMENT NO. 7: A commenter asked that the deadline be extended until November 30, 2023.

RESPONSE NO. 7: While comment was also provided that these funds need to be disbursed without delay, providing nonprofits an additional month may help ensure more complete proposals for use of the funds. The guidelines have been changed to indicate a November 30, 2023 deadline.

COMMENT NO. 8: A commenter asked that communities be allowed to apply that have an unknown scope of need.

RESPONSE NO. 8: To disburse this limited source of funds, applicants must demonstrate and document the need for the proposed project. This can be provided through data and supplemented with anecdotal information from their communities.

COMMENT NO. 9: A commenter said that the guidelines are ambiguous regarding eligibility of cost reimbursement period.

RESPONSE NO. 9: Section 24 of HB 5 appropriated the $5 million for ESFG "for the biennium beginning July 1, 2023." Costs incurred prior to that appropriation date will not be eligible for reimbursement through the ESFG program. ESFG funds may be used to support projects that began prior to July 1, 2023, but only costs incurred after the beginning of the biennium, for which these funds were allocated, will be considered for reimbursement with ESFG funds.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VII and the repeal of ARM 24.150.101, 24.150.201, 24.150.202, 24.150.301, 24.150.401, 24.150.402, 24.150.404, 24.150.501, 24.150.503, 24.150.505, 24.150.507, 24.150.512, 24.150.513, 24.150.601, 24.150.602, 24.150.2201, and 24.150.2301 regarding the Licensed Hearing Aid Dispenser Program	)	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On September 8, 2023, the Department of Labor and Industry published MAR Notice No. 24-150-42 regarding the public hearing on the proposed changes to the above-stated rules, at page 984 of the 2023 Montana Administrative Register, Issue No. 17.

2. On October 3, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters suggested specifying in NEW RULE I(1)(a) that the application fee for hearing aid dispensers is for both in-state and out-of-state applicants.

RESPONSE 1: The department determined that separating the types of HAD applicants is unnecessary as the process and fees are the same. The department is adopting the new rule as proposed.

COMMENT 2: Several commenters requested the department require both a practical and written licensure exam in NEW RULE II.

RESPONSE 2: The department determined that the practical examination presented concerns for legal defensibility and barriers to exam delivery and did not have a demonstrated risk it mitigated through an evidence basis. The department's evaluation of the exam requirements of all 50 states demonstrated that several states have either no exam requirement or the written exam only. The written exam does evaluate both knowledge and ability, has greater legal defensibility, and can be delivered in a monitored and accessible manner.

COMMENT 3: Several commenters requested adding guidance to NEW RULE III regarding an appropriate time limit for a return policy.

RESPONSE 3: As simplified by Senate Bill 456, 37-16-303, MCA, now sets forth the mandatory provisions in bills of sale that licensees must provide to hearing aid customers. The statute requires bills of sale to contain any warranty or return policy provided, or the lack of either. There are no further statutory requirements on warranties or return policies. Because the department believes that licensed dispensers and trainees will provide clients clear, complete bills of sale that comply with the statutory minimum requirements, the department is adopting NEW RULE III exactly as proposed.

COMMENT 4: Several commenters recommended the department specify direct or indirect supervision of trainees based on supervisor location in NEW RULE IV.

RESPONSE 4: The department believes supervisors will provide the appropriate supervision in every training environment. Supervision requirements are being broadened in this new rule to allow for supervisor discretion as well as multiple business locations.

COMMENT 5: Several commenters asked the department to amend NEW RULE V(2) to use "licensed hearing aid dispensers" in place of "dispensers."

RESPONSE 5: Several terms are used throughout the new rules to mean licensed hearing aid dispensers. The department has jurisdiction over licensed dispensers only and does not believe use of "dispensers" causes undue confusion.

COMMENT 6: Several commenters opposed the repeal of ARM 24.150.601 and recommended the department continue to require hearing tests before licensees dispense prescription hearing aids.

RESPONSE 6: The rule finalized by the Food and Drug Administration on October 17, 2022, established a regulatory category for over-the-counter hearing aids. Additionally, the rule made related amendments to the regulatory framework for prescription hearing aids. One of the changes was the repeal of conditions for sale for prescription hearing aids, formerly at 21 CFR 802.421. Because the rule eliminated the hearing test requirement for sale of prescription hearing aids, the department is not requiring mandatory hearing tests going forward to align with and not have stricter standards than the federal requirements. Licensees may still choose to require such tests in their practices.

COMMENT 7: Several commenters opposed the repeal of ARM 24.150.2201 and requested the department continue to require continuing education (CE) for hearing aid dispensers.

RESPONSE 7: The department believes that licensees will continue to obtain whatever education and training is necessary to maintain high standards of practice, even without the department requiring and monitoring mandatory CE.

4. The agency has adopted NEW RULES I (24.151.401), II (24.151.501), III (24.151.601), IV (24.151.504), V (24.151.404), VI (24.151.2301), and VII (24.151.604) as proposed.

5. The agency has repealed ARM 24.150.101, 24.150.201, 24.150.202, 24.150.301, 24.150.401, 24.150.402, 24.150.404, 24.150.501, 24.150.503, 24.150.505, 24.150.507, 24.150.512, 24.150.513, 24.150.601, 24.150.602, 24.150.2201, and 24.150.2301 as proposed.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.159.301, 24.159.915, and 24.159.916, the adoption of New Rules I and II, and the repeal of ARM 24.159.404, 24.159.407, 24.159.408, 24.159.409, 24.159.502, 24.159.901, 24.159.911, and 24.159.912, pertaining to the Board of Nursing	)))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 4, 2023, the Board of Nursing (agency) published MAR Notice No. 24-159-95 regarding the public hearing on the proposed changes to the above-stated rules, at page 747 of the 2023 Montana Administrative Register, Issue No. 15.

2. On August 30, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.159.301, 24.159.915, and 24.159.916 as proposed.

4. The agency has adopted NEW RULE I (24.159.2305) and NEW RULE II (24.159.1477) as proposed.

5. The agency has repealed ARM 24.159.404, 24.159.407, 24.159.408, 24.159.409, 24.159.502, 24.159.901, 24.159.911, and 24.159.912 as proposed.

BOARD OF NURSING
SARAH SPANGLER, RN,
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.25.1102 pertaining to navigable waterways	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2023, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-218 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 758 of the 2023 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 36.25.1102 exactly as proposed.

3. No comments or testimony were received.

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.79.326, 37.85.104, 37.85.105, 37.85.106, 37.86.3607, and 37.87.1226 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	)))))))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1037 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 646 of the 2023 Montana Administrative Register, Issue Number 13. On September 8, 2023, the department published the notice of amendment of the above-stated rules at page 1025 of the 2023 Montana Administrative Register, Issue Number 17. The amended rules were retroactively effective to July 1, 2023.

2. In the September 8, 2023 notice of amendment on page 1028, in response to Comment #5, the department stated that it would increase the psychological testing policy adjuster from 145% to 200% in ARM 37.85.105 and would make the change effective July 1, 2023. The effective date on the final version of the adoption notice, however, was mistakenly not changed. This corrected notice is filed to effectuate the change to ensure the psychological testing policy adjuster is effective July 1, 2023.

3. The rule, as adopted in corrected form, reads as follows, deleted matter interlined, new matter underlined:

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (2)(b) remain as adopted.

(c) Policy adjustors are effective ~~July 1, 2022~~ July 1, 2023. The maternity policy adjustor is 100%. The family planning policy adjustor is 105%. The psychological testing policy adjustor is 200%. The psychological testing policy adjustor applies only to psychologists.

(d) through (6) remain as adopted.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State October 24, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 42.20.519 pertaining to property tax abatements for gray water systems	)))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On September 8, 2023, the Department of Revenue published MAR Notice No. 42-1067 pertaining to the proposed repeal of the above-stated rule at page 1010 of the 2023 Montana Administrative Register, Issue Number 17.

2. No requests for a public hearing were received. The department did not receive any written comments in support of or opposition to the proposed repeal.

3. The department has repealed ARM 42.20.519 as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 24, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2023. This table includes notices in which those rules adopted during the period May 12, 2023, through October 20, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-59-639 Bank Semiannual Assessments, p. 599, 869
2-59-640 Renewal Fees of Mortgage Brokers, Mortgage Lenders, Mortgage Servicers, and Mortgage Loan Originators, p. 602, 870

(Public Employees' Retirement Board)
2-43-641 Application Process for Disability Benefits, p. 1201

(Montana Tax Appeal Board)
2-51-629 Model Procedural Rules - Orders of the Board - Decision by the Board, p. 596, 868

AGRICULTURE, Department of, Title 4

4-23-277 Nonrefundable Application Fees, p. 923
4-23-279 Annual Report and Assessment Fees, p. 925
4-23-280 State Grain Lab Fee Schedule, p. 927

STATE AUDITOR, Office of, Title 6

6-275 Approved Risk List, p. 317, 476
6-276 Fire Premium Allocation - Presumptively Reasonable Allocations, p. 460, 605, 871
6-277 Bail Bond Documents, p. 534, 872
6-278 Status of Carriers as Small Insurer Health Carriers, p. 608, 876
6-279 Classification Review Committee Agency Organization, Administrative Appeal of a Classification Decision, Telephone and Electronic Hearings, and Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability, p. 724, 1085
6-280 Continuing Education Program for Insurance Producers and Consultants, p. 778, 1397
6-281 Regulatory Sandbox Waivers, p. 782, 1398
6-282 Network Adequacy for Managed Care Plans, p. 1401
6-283 Quality Assurance for Managed Care Plans, p. 1403

COMMERCE, Department of, Title 8

8-94-204 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1118
8-111-200 Public Participation - Incorporation of Model Rules - Meetings of the Board - Definitions, p. 200, 402
8-111-202 Board of Housing Temporary Assistance to Needy Families (TANF) and Coal Trust Multifamily Homes Loan Programs, p. 936, 1405
8-111-203 Administration of the Emergency Shelter Facility Grant (ESFG) Program, p. 949

EDUCATION, Title 10

(Office of Public Instruction)

10-75-101 Montana Indian Language Preservation Grants, p. 681, 1086

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-596 Closing the Bjornberg Bridge Fishing Access Site in Phillips County, p. 405, 449
12-597 Closing the Alkali Creek Fishing Access Site in Phillips County, p. 407, 450
12-598 Closing the Cree Crossing Wildlife Management Area on the Milk River in Phillips County, p. 409, 451
12-599 Closing the Truly Bridge Fishing Access Site in Cascade County, p. 477, 564
12-601 Partial Closure of the Jefferson River From the Williams Bridge Fishing Access Site to the Meridian Bridge in Jefferson County, p. 518

12-602 Closing the Alder Bridge Fishing Access Site on the Ruby River in Madison County, p. 520, 565
12-603 Public Use Rules of the Department of Fish, Wildlife and Parks Public Lands, p. 952
12-604 Closing the Rosebud Isle Fishing Access Site in Stillwater County, p. 667
12-605 Closing the Yellowstone River Near the Twin Bridges Road Railroad Bridge in Stillwater County, p. 669
12-608 Closing the Holmgren Ranch Fishing Access Site on the Yellowstone River in Stillwater County, p. 703
12-609 Partial Closure of the Marshall Creek Wildlife Management Area in Missoula County, p. 761
12-610 Partial Closure of the Flathead and Clark Fork Rivers in Sanders County, p. 877
12-611 Closing the Kookoosint Fishing Access Site in Sanders County, p. 880
12-612 Closing the Paradise Crossing Fishing Access Site in Sanders County, p. 882
12-613 Closing the Full Curl Wildlife Management Area in Sanders County, p. 884

(Fish and Wildlife Commission)
12-606 Brinkman Game Preserve, p. 611
12-614 Grizzly Bears, p. 1043, 1204
12-615 Control Methods of the Gray Wolf Include Nonlethal and Legal Means, p. 1121

(State Parks and Recreation Board)
12-607 Smith River Bonus Point Permit System, p. 976

GOVERNOR, Office of the, Title 14

14-8 Sage Grouse Habitat Quantification Tool Designation, p. 1123

ENVIRONMENTAL QUALITY, Department of, Title 17

17-429 Modernizing Application and Notice Requirements - Allowing for Electronic-Only Submittal and Use of Modern Mapping Technologies - Eliminating Requirements Related to Temporary Construction Camps - General Housekeeping Updates, p. 373, 764
17-430 Review of Sanitation Facilities in Subdivisions Such as Water Wells, Onsite Sewage Disposal Systems and Stormwater Amenities - Amendment to Circular DEQ-4 and Circular DEQ-20, p. 786
17-431 Incorporation by Reference of the Most Recent Version of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP), p. 806
17-432A Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1050

17-432B Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1125
17-432C Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1136
17-432D Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1212
17-433 Montana Ground Water Pollution Control System Permits, p. 1228

TRANSPORTATION, Department of, Title 18

18-190 Motor Carrier Services Safety Requirements, p. 389, 566
18-191 Alternative Project Delivery Methods, p. 503, 705
18-192 Utility and Eligible Project Right-of-Way Occupancy, p. 613, 1012
18-193 Fuel Tax Bridge and Road Safety and Accountability Program, p. 463, 706
18-194 Refunds of Gasoline and Special Fuel Tax, p. 466, 671
18-195 Tax on Electric Vehicle Charging Stations, p. 809, 1186
18-196 Overdimensional Permit Requirements, p. 980, 1406

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

23-3-272 Driver Licensing and Licensing Operators of Commercial Motor Vehicles, p. 506, 766
23-3-273 Licensing Operations of Commercial Motor Vehicles, p. 728, 1089
23-12-274 Criminal History Information Provided by the Department to Qualified Entities, p. 1072
23-12-275 Montana Law Enforcement Academy, p. 1090

(Public Safety Officers Standards and Training Council)
23-13-269 Certification of Public Safety Officers, p. 174, 479

(Board of Crime Control)
23-14-271 Board of Crime Control, p. 392, 567

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

24-12-405 Displaced Homemaker Program, p. 537, 767
24-17-407 Prevailing Wages, p. 1240
24-22-400 Incumbent Worker Training, p. 223, 568
24-23-404 Job Growth Incentive Tax Credit, p. 511, 769
24-29-399 Workers' Compensation Medical Fee Schedule, p. 319, 522

24-29-403 Utilization and Treatment Guidelines - Drug Formulary for Workers' Compensation Purposes, p. 398, 523
24-101-406 Renewal Dates and Requirements, p. 733, 1092
24-150-42 Licensed Hearing Aid Dispenser Program, p. 984
24-160-1 Pediatric Complex Care Assistant License, p. 833, 1412
24-182-36 Board of Private Security, p. 836

(Alternative Health Care Board)
24-111-28 Midwife Prescribing, p. 542, 886
24-111-29 Acupuncturist Licensing, p. 738, 1093, 1187

(Board of Medical Examiners)
24-156-94 Physician Assistants, p. 813, 1149
24-156-95 General Revisions, p. 819, 1407
24-156-96 Montana Health Corps, p. 828, 1410
24-156-97 Supervision of Physician Assistant, p. 1243

(Board of Nursing)
24-159-93 Continuing Education, p. 560
24-159-94 Informational Notice of Proposed Rulemaking - Proposed 2023 Rulemaking by the Interstate Commission of Nurse Licensure Compact Administrators, p. 483
24-159-95 Board of Nursing, p. 747

(Board of Optometry)
24-168-45 General Revisions, p. 994

(Board of Psychologists)
24-189-44 Board of Psychologists, p. 1245

(Board of Real Estate Appraisers)
24-207-47 Fees - Practical Application of Real Estate Appraisal, p. 754, 1095

(Board of Speech-Language Pathologists and Audiologists)
24-222-29 Board of Speech-Language Pathologists and Audiologists, p. 1267

LIVESTOCK, Department of, Title 32

32-23-336 Department of Livestock Meat Inspection and Milk and Egg Bureau Fees, p. 226, 452
32-23-338 Issuance of Permits, p. 688, 1189
32-23-339 Diagnostic Laboratory Fees, p. 690, 1190
32-23-340 Records to Be Kept, p. 860
32-23-342 Testing Within the DSA, p. 1282
32-23-343 Garbage Feeding, p. 1284
32-23-344 Animal Health Division Fees, p. 1287

MILITARY AFFAIRS, Department of, Title 34

34-11 Application of Reimbursement for Service Members' Group Life Insurance Premiums, p. 863, 1191

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-217 Bitterroot Valley Sanitary Landfill Controlled Groundwater Area, p. 514, 1018
36-22-218 Navigable Waterways, p. 758
36-22-219 Water Right Permitting, p. 1151

(Board of Oil and Gas Conservation)
36-22-220 Adoption of Forms - Reports by Producers, Tax Report, and Tax Rate, p. 1290

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-1006 Low Income Home Energy Assistance Program (LIHEAP), p. 228, 480
37-1011 Food Distribution Program on Indian Reservations, p. 245, 481
37-1017 Emergency Medical Services, p. 620, 1020
37-1023 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 252, 482
37-1025 Developmental Disabilities Program Incident Reporting and Handling, p. 865
37-1026 Trauma Facility Designation, p. 1001
37-1028 Applied Behavior Analysis Services, p. 468, 902
37-1029 Increase of Laboratory Fees, p. 1007
37-1030 Hospice Reimbursement, p. 472, 672
37-1033 Chemical Dependency Programs - Medicaid Mental Health Services, p. 693
37-1035 Medicaid Home and Community-Based Services Program, p. 643
37-1036 Developmental Disabilities Program Reimbursement for Services, p. 698, 1023
37-1037 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 646, 1025
37-1038 Nursing Facility Reimbursement, p. 663, 1032
37-1039 Chemical Dependency Programs and Medicaid Mental Health Services, p. 1292
37-1044 Licensure of Day Care Facilities, p. 1297

PUBLIC SERVICE REGULATION, Department of, Title 38

38-3-250 Deregulation of Class C Motor Carriers in Montana's Motor Carrier Act, p. 1076
38-5-260 Construction of Utility Lines and Facilities, p. 152, 322, 524

38-5-261 Optional Filing Standards for Electric, Gas, Water, and Sewer Utilities, p. 1183

REVENUE, Department of, Title 42

42-1066 Montana Marijuana Regulation and Taxation Act (Title 16, chapter 12, MCA) - Marijuana Testing Laboratory Licensees, p. 570
42-1067 Property Tax Abatements for Gray Water Systems, p. 1010

SECRETARY OF STATE, Office of, Title 44

44-2-264 Business Services Annual Report Filing Fee Waiver in 2024, p. 9, 525
44-2-265 Third-Party Testing of Voting Systems, p. 1082

(Office of the Commissioner of Political Practices)
44-2-266 Contribution Limits, p. 1394

MONTANA ADMINISTRATIVE REGISTER

2023 ISSUE NO. 21
NOVEMBER 3, 2023
PAGES 1428-1575

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